

ESTTA Tracking number: **ESTTA425235**

Filing date: **08/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047433
Party	Defendant Jay-Y Enterprise Co., Inc.
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Date	08/15/2011
Attachments	Notice of Filing of Trial Testimony of Teresa Chen.pdf ( 5 pages )(240277 bytes ) 2011-02-08 Depo of Chen, Teresa - Vol. 1-1.pdf ( 50 pages )(3569864 bytes ) 2011-02-08 Depo of Chen, Teresa - Vol. 1-2.pdf ( 50 pages )(3938731 bytes ) 2011-02-08 Depo of Chen, Teresa - Vol. 1-3.pdf ( 50 pages )(3899554 bytes ) 2011-02-08 Depo of Chen, Teresa - Vol. 1-4.pdf ( 21 pages )(1610855 bytes ) 2011-03-23 Depo of Chen, Teresa - Vol. 2-1.pdf ( 43 pages )(3236907 bytes ) 2011-03-23 Depo of Chen, Teresa - Vol. 2-2.pdf ( 44 pages )(3538974 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GADO S.A.R.L.,

Petitioner,

v.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

Cancellation No. 92047433

**RESPONDENT'S NOTICE OF FILING OF TRIAL TESTIMONY**  
**OF TERESA CHEN PURSUANT TO TRADEMARK RULE 2.125**

**PLEASE TAKE NOTICE** that pursuant to Rule 2.125 of the Trademark Rules of Practice, Respondent Jay-Y Enterprise Co., Inc. hereby files Volumes I and II of the trial testimony of Teresa Chen, taken on February 8, 2011 and March 23, 2011. The same exhibits were used in the depositions of Ward Chen and Michael Ou. Accordingly, and for the sake of efficiency, only one set of deposition exhibits (a confidential and redacted set) is being filed. As the deposition exhibits are voluminous, they are being filed with the Board by Federal Express according to the Board's practices.

Pursuant to the attached stipulation (Docket No. 54), as approved by the Board (Docket No. 55), the parties have waived all certification and sealing requirements under Trademark Rule 2.123(f).

The transcript of the deposition contains both testimony and exhibits designated as confidential under the Protective Order in this case, dated August 15, 2009. Accordingly, and pursuant to 37 CFR 2.126(d) and Rule 412.04 of the Trademark Trial and Appeal Board Manual of Procedure, the signed original of the deposition transcript, along with the exhibits, has been

submitted under a separate cover marked confidential and a redacted version of the foregoing document and exhibits, which has also been submitted, may be made part of the public record in this case.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: August 15, 2011

By:                     /s/ Kenneth L. Wilton                    

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GADO S.A.R.L.,

Petitioner,

v.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

AND RELATED COUNTERCLAIM.

Cancellation No. 92047433

**STIPULATION REGARDING FILING OF TRANSCRIPTS OF**  
**TESTIMONY DEPOSITIONS AND EXHIBITS THERETO**

The parties hereto hereby agree and stipulate, pursuant to Trademark Rule 2.123(f), that they jointly waive the certification, sealing and exhibit filing requirements of any testimony deposition transcripts in this proceeding as set forth in Rule 2.123(f).

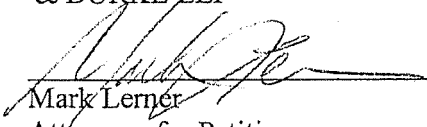
Pursuant to this stipulation, the parties agree that all deposition transcripts filed to date are not objectionable under Rules 2.123(f) and 2.125(c). As to future deposition transcripts to be filed, the party introducing testimony shall attend to the filing of the transcripts for all testimonial depositions pursuant to the requirements of Rules 2.123 and 2.125, with the exception that the certification, sealing, and exhibit filing requirements under Rule 2.123(f) are waived. The parties further stipulate that the correction of typographical errors contemplated by Rule 2.125(b) shall be indicated on an errata sheet included with each transcript.

In addition, as required and considered appropriate under the applicable Protective Order, the Parties will designate any confidential information found in deposition transcripts or exhibits and file un-redacted Confidential versions, as well as redacted non-Confidential versions, of the transcript and those exhibits, under separate cover, with the Board.



Dated: April 5, 2011


SATTERLEE STEPHENS BURKE  
& BURKE LLP



---

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2011, I served the foregoing Respondent's Notice of Filing of Trial Testimony of Teresa Chen Pursuant to Trademark Rule 2.125 on the Petitioner by depositing a true copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail addressed to Petitioner's counsel as follows:

Mark Lerner, Esq.  
Robert Carrillo, Esq.  
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/s/ Eleanor Elko

Eleanor Elko

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

 **ORIGINAL**

GADO S.A.R.I.,

Petitioner, )

) Cancellation No.

VS. )

92047433

JAY-Y ENTERPRISE CO., INC., )

Respondent. )

VOLUME I

\_\_\_\_\_  
AND RELATED COUNTERCLAIM )

-----)

DEPOSITION OF TERESA CHEN

LOS ANGELES, CALIFORNIA

TUESDAY, FEBRUARY 8, 2011

REPORTED BY: CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR

JOB NO.: 36236

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February 8, 2011

8

10:03 a.m.

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12

13 Videotaped Deposition of Teresa Chen, taken on  
14 behalf of Respondent and Counter-Claimant  
15 Jay-Y Enterprise, held at the offices of Seyfarth  
16 Shaw, 333 South Hope Street, Suite 3900,  
17 Los Angeles, California, before  
18 Christy A. Cannariato, CSR #7954, RPR, CRR.

19

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21

22

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24

25

A P P E A R A N C E S

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NEW YORK, NEW YORK 10169

ALSO PRESENT:

WARD CHEN

FRANCES CHOW, MANDARIN INTERPRETER

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QUESTIONS INSTRUCTED NOT TO ANSWER

(NONE)



1 Los Angeles, California; Tuesday, February 8, 2011

2 10:02a.m.

3  
4 FRANCES CHOW,

5 having been first duly sworn to  
6 translate the English language  
7 into the Mandarin language and  
8 the Mandarin language into the  
9 English language to the best of  
10 her ability, interpreted  
11 the following:

12  
13 TERESA CHEN,

14 having first been duly sworn, was  
15 examined and testified as follows:

16  
17 DIRECT EXAMINATION

18 BY MR. WILTON:

19 Q. Good morning, Miss Chen.

20 A. (In English) Good morning.

21 Q. As you know, we are here for your testimonial  
22 deposition in the Gado vs. Jay-Y matter.

23 A. All right.

24 Q. And I know we've discussed it, but just so  
25 we're aware again, everything we're saying is being

1 written down by the court reporter sitting here to my  
2 left. So if we can make sure that I finish my questions  
3 before you answer, and I will let you finish your answers  
4 before I ask my next question, it will make the transcript  
5 that much cleaner.

6 Of course, with Miss Chow here, I think that's  
7 going to happen anyway by virtue of the fact that she has  
8 to interpret between my questions and your answers.

9 A. All right.

10 Q. And just for the record, this is being taken  
11 pursuant to notice, and counsel for Gado is here and  
12 present and willing to ask his questions when I'm  
13 finished.

14 Could you please state your name for the  
15 record.

16 A. Teresa Chen.

17 Q. And where do you work?

18 A. Jay-Y Enterprise.

19 Q. And what is your position at Jay-Y?

20 A. Well, I work in procurement, marketing. And  
21 also because the company is not big, so I do some  
22 accounting. And I will go and look after the -- some of  
23 the warehouse. And also just all the miscellaneous types  
24 of work.

25 Q. When was Jay-Y founded?

1 A. 1983.

2 Q. And who founded Jay-Y?

3 A. James Chen.

4 Q. And who is James Chen?

5 A. My husband.

6 Q. And when Jay-Y was founded, where was it  
7 located?

8 A. It was in Downtown L.A. in a distribution  
9 district.

10 Q. What is a distribution district?

11 A. (In English) Wholesale. Sorry. It's the  
12 wholesale district.

13 THE INTERPRETER: Actually, I could be  
14 interpreting "wholesale" or "distribution." That was the  
15 interpreter's word choice. So the correct interpretation  
16 should be "warehouse district."

17 Q. Wholesale?

18 THE INTERPRETER: Yes, "wholesale district."  
19 Correction.

20 Q. Why don't we try this again.

21 Where was Jay-Y located when it was first  
22 formed?

23 A. In Los Angeles, Downtown, the Wholesale  
24 District.

25 Q. In 1983 did Jay-Y have a retail storefront?

1 A. Yes.

2 Q. Is Jay-Y still located in Downtown  
3 Los Angeles?

4 A. No.

5 Q. When did Jay-Y move from Downtown Los Angeles?

6 A. I don't remember exactly, but I think it was  
7 around 1989. Around there.

8 Q. And where did Jay-Y move when it moved from  
9 Downtown Los Angeles?

10 A. Moved to City of Industry.

11 Q. And when Jay-Y moved to the City of industry,  
12 did it have a retail storefront?

13 A. No.

14 Q. Is Jay-Y still located in the City of  
15 Industry?

16 A. No. It moved again.

17 Q. And when did Jay-Y move again?

18 A. Again, I cannot be completely sure. I believe  
19 it was around 1993.

20 Q. And where did Jay-Y move to when it moved from  
21 the City of Industry?

22 A. Pomona.

23 Q. Is that where Jay-Y is located now?

24 A. Yes.

25 Q. And at the Pomona location does Jay-Y have a

1 retail storefront?

2 A. No.

3 Q. When Jay-Y was founded in 1983, what did it  
4 sell?

5 MR. LERNER: Objection. I guess you  
6 indicated -- I'm not sure whether you clarified right when  
7 they were founded what kind of company they were. It was  
8 in that period they had a retail storefront, but I don't  
9 think there's a foundation yet for the fact that they sell  
10 stuff, which is kind of a speaking objection.

11 Q. MR. WILTON: So during that type of exchange  
12 you don't have to answer.

13 A. All right.

14 Q. When Jay-Y was founded in 1983, what did it  
15 do?

16 A. It was in the business of sunglasses and some  
17 toys.

18 Q. A business of doing what with sunglasses and  
19 some toys?

20 A. Wholesale.

21 Q. So was Jay-Y selling sunglasses and toys in  
22 1983?

23 A. Yes.

24 Q. And does Jay-Y still sell sunglasses?

25 A. Yes.

1 Q. Does Jay-Y still sell toys?

2 A. No.

3 Q. In 1983 where were the sunglasses that Jay-Y  
4 sold manufactured?

5 MR. LERNER: Objection. If she knows.

6 Q. Let's try that question again.

7 Do you know where the sunglasses that Jay-Y  
8 was selling in 1983 were manufactured?

9 A. In Taiwan.

10 Q. And how do you know that?

11 A. Because at that time the more lower end types  
12 of sunglasses they were being manufactured in Taiwan.

13 Q. Were you involved with Jay-Y in 1983?

14 THE INTERPRETER: Counsel, the word "involved"  
15 in Chinese can be interpreted in many different ways.

16 Q. Try this a different way.

17 Did you work for Jay-Y in 1983?

18 A. I was helping Jay-Y, but I wasn't working  
19 there. I was not receiving a salary.

20 Q. When you say you were helping, what were you  
21 doing?

22 A. I was helping them with purchasing and then  
23 and I was then helping with getting the shipment to Jay-Y.

24 Q. And where were you located in 1983?

25 A. I was in Taiwan.

1 Q. And was James Chen in California at the time?

2 A. Yes.

3 Q. And when did you move to the United States?

4 A. 1987. But between 1983 to 1987 I did come  
5 here to visit my husband.

6 Q. When you moved to the United States, did you  
7 work for Jay-Y?

8 A. Yes.

9 Q. Were you on the payroll at that time?

10 A. Yes.

11 Q. And what did you do at Jay-Y in 1987?

12 A. Well, I was doing sales and purchasing. And  
13 also, even though we had an accountant, but because I was  
14 still help with the books, and because we're a small  
15 company, even though there were people in the warehouse, I  
16 would still help out. But mostly I was working with sales  
17 and purchasing.

18 Q. When you say you were working with sales, what  
19 does that mean?

20 A. Well, I help by going to the shows and also  
21 making phone calls to the customers. And that's how I was  
22 helping with the sales type of work.

23 Q. And when you said you were helping with  
24 purchasing, can you describe what you were doing with  
25 regard to purchasing?

1           A.       Okay. Well, I would go to the factories, and  
2 then they would suggest samples to me. Then what I liked  
3 or what I think would sell, well, then I would arrange for  
4 the colors. Then I would discuss the pricing and then  
5 make an order.

6           Q.       How did you decide what would sell well?

7           A.       It's just from a feeling.

8           Q.       And where were the factories that you went to  
9 in 1987?

10          A.       Are you asking 1987 or 1997?

11          Q.       '87.

12          A.       1987, Taiwan.

13          Q.       Did the purchasing process at Jay-Y ever  
14 change? Let me start over.

15                   MR. LERNER: Thank you.

16          Q.       Yeah, that didn't work.

17                   You mentioned that you had -- in around 1987  
18 you would go to the factories in Taiwan; is that right?

19          A.       Yes.

20          Q.       And at that time the factories would suggest  
21 designs to you; is that correct?

22          A.       Yes.

23          Q.       And then you would choose which designs you  
24 thought would sell and negotiate pricing and purchase  
25 them?



1 A. Yes.

2 Q. Did that process ever change?

3 A. Around -- yes.

4 Q. When did that change?

5 A. Approximately around the beginning of 1990.

6 Q. And how did the process change around the  
7 beginning of 1990?

8 A. Well, I started feeling that I think we need  
9 to have our own brand.

10 Q. Why did you think Jay-Y needed its own brand?

11 A. Well, because at that time in this market  
12 because what we were selling were low end glasses. So the  
13 customers for them the price was very important. So let's  
14 say if I were selling glasses for \$12, and then my  
15 competitors would sell theirs for \$11.50, and then I would  
16 have to decrease my prices to 11.50. So then we just have  
17 to keep, you know, pushing down our prices. And so in  
18 this type of market if we keep pushing down our prices, it  
19 would just make it very hard to do business.

20 Q. So --

21 A. Can I also clarify? I want to correct. It's  
22 not that it makes doing business hard. Let's say if we  
23 keep pushing down our prices, then we would have to change  
24 -- then the quality of our glasses then would be -- would  
25 decrease. And then so the more that we -- so the more the

1 quality decreases, then eventually then -- and so the more  
2 you push down the prices, the more you would lower the  
3 quality. Then as the quality becomes worse, then the  
4 customers would no longer want your products.

5 Q. Why would lowering your price result in your  
6 lowering the quality of the glasses?

7 A. Because the cost is there.

8 Q. So I'm still not understanding the connection  
9 between the cost and the quality. What is that  
10 connection?

11 A. Well, for example, let's say if you -- the  
12 cheaper you sell for, then we have a certain limit as for  
13 our profit margin. And then so when I purchase, I would  
14 have to purchase at a cheaper price. And then, of course,  
15 the factories they also have a certain limited within  
16 their profit margin. So then they would skim on perhaps  
17 material or the workmanship. For example, let's say, for  
18 example, usually if they need to polish it twice. Instead  
19 of doing it twice, they'll only polish it once.

20 Q. When we started this line of discussion, you  
21 mentioned developing a brand for Jay-Y. How would a brand  
22 change the process that you're describing about decreasing  
23 prices and decreasing costs and decreasing quality?

24 A. Well, in the past when a customer purchases a  
25 certain model, or they're thinking, oh, that's nice, then

1 they don't know really that it is yours. So if it's  
2 cheaper elsewhere, they'll buy it elsewhere. But let's  
3 say if it's your own brand, then they like -- let's say  
4 they like the quality. It's better or perhaps there are  
5 better color choices. So then when they buy it from you,  
6 they know it's your brand. Whereas, in the past they  
7 don't know that it was yours.

8 Q. And when you talk about developing a brand,  
9 what are you referring to?

10 A. Well, meaning I want to have a logo. So for  
11 the customers, if it sold well, they'll know that, oh,  
12 that is your product.

13 Q. And when you talk about a logo, what are you  
14 referring to?

15 A. I don't understand what he's asking. Is it  
16 possible to change the question?

17 Q. It certainly is. What did you intend to do  
18 with a logo that was developed by Jay-Y?

19 A. Like I said, to put on the sunglasses so that  
20 the customers will know that that is our brand.

21 Q. And you may have answered this. When did you  
22 make the decision to start using the logo?

23 A. Well, because it's been such a long time ago,  
24 I knew that I had started thinking about this probably at  
25 the beginning of 1990. But to actually do it, I think it

1 was somewhere in 1992 or '93.

2 MR. CHEN: Excuse me. I think when she  
3 says --

4 MR. WILTON: You're on the record.

5 MR. CHEN: I think when she says (speaking in  
6 Mandarin), is that early '90 or --

7 THE INTERPRETER: Beginning of 90s.

8 MR. CHEN: -- beginning of 1990s? I wasn't  
9 sure.

10 MR. WILTON: I'm not sure it matters.

11 THE INTERPRETER: The question that Ward was  
12 asking in Chinese was when his mother -- when the witness  
13 said, what she meant should it be interpreted as the  
14 beginning of 1990 or the early 1990s was the difference.  
15 So let the interpreter clarify.

16 (Speaking in Mandarin.)

17 The interpreter clarified and asked, "Did you  
18 mean early 1990 that you mean in January, February, March?  
19 Or do you mean in the early part of the decade 1990?" And  
20 the response, I believe, would be that in the early part  
21 of the decade of 1990.

22 Q. BY MR. WILTON: After you made the decision to  
23 start to use logos or create a brand, what did you do next  
24 in order to start that process?

25 A. Well, I went to the factory, and usually the

1 factories have a design department. So I went and told  
2 them that I would like to have our own brand. And so I  
3 asked him to do some drawings of logos, and then I chose  
4 from their drawings a logo.

5 Q. When you first decided to use a logo, what  
6 logos were suggested by the factory?

7 A. It's not suggested by the factory. I thought  
8 it up.

9 Q. So when you decided to start using a logo -- I  
10 will just ask it. Did you come up with the ideas for the  
11 logos or did the factory?

12 MR. LERNER: Objection. I'm not sure it's  
13 either/or.

14 Q. That's true. Why don't we start this again,  
15 because I think I have a contradiction I have to resolve.

16 Sometime in the early 1909s, you decided that  
17 Jay-Y should start using a logo on its glasses. Is that  
18 right?

19 A. Yes.

20 Q. And after you made that decision, what did you  
21 do next in order to start using a logo on Jay-Y  
22 sunglasses?

23 A. Well, when I was thinking about the logo, I  
24 was trying to think about what might be appropriate. So  
25 when I saw the Christian Dior, they have the logo CD, or

1 Calvin Klein, they have CK. So I came up with the idea of  
2 having either CG or DG and also using the brand  
3 Challenger. So it was more of a sports type of  
4 sunglasses, so I gave it the name Challenger.

5 Q. Let me back up a second. So did you come up  
6 with the first logos that were used by Jay-Y?

7 A. Yes.

8 Q. And were those that you came up with CG, DG,  
9 and Challenger?

10 A. Yes.

11 Q. And did CG stand for something?

12 A. Oh, at that time I was thinking of maybe Cool  
13 Girl or Cool Sunglasses.

14 Q. Was there a particular style of sunglasses  
15 that you intended to use the CG logo on?

16 A. It was still more special, more cool.

17 Q. Was there a particular style of sunglass that  
18 you intended to use the CG logo on?

19 A. Well, if I felt a particular style looks kind  
20 of cool, then I would choose that instead of the more  
21 regular types of sunglasses.

22 Q. And you mentioned the DG logo. What did that  
23 stand for?

24 MR. LERNER: Objection. Foundation.

25 Q. You mentioned the DG logo. Did that in your

1 mind stand for anything?

2 A. I just felt that for Designer Glasses. It  
3 just felt more like designer glasses.

4 Q. Were there particular styles of sunglasses  
5 that you intended to use the DG logo on?

6 A. Well, I just felt that if the style of the  
7 sunglasses were newer, less traditional, had more of a  
8 designer feel, then I would choose that.

9 Q. And you mentioned that you also came up with  
10 the logo Challenger; is that right?

11 A. Yes.

12 Q. How did you come up with Challenger as a logo?

13 THE INTERPRETER: The interpreter missed the  
14 first part of her response. May I clarify?

15 MR. WILTON: Yes.

16 A. Because at that time there was the Space  
17 Shuttle the Challenger. So I thought that would be quite  
18 special.

19 Q. Okay. What types of sunglasses did you intend  
20 to put the Challenger logo on?

21 A. The more sports athletic types of sunglasses  
22 of styles.

23 Q. After you came up with the idea for the three  
24 logos that you mentioned, what did you do next in order to  
25 put them on sunglasses?

1           A.       Well, after I thought up the names, then I  
2 went to the factory and asked them to do some drawings for  
3 me. And after that I chose -- after I chose the drawings,  
4 then I asked them to put it on one or two styles maybe on  
5 the corner of the sunglasses or on the lens. Now, we were  
6 more just trying it out at that time, still on a trial  
7 basis.

8           Q.       And do you know when this was?

9           A.       Well, because it was such a long time ago, I  
10 can't be exactly sure, but I believe it should be  
11 somewhere in '92 or '93.

12          Q.       After -- where was the fact -- was it one  
13 factory that was manufacturing glasses with the logos?

14          A.       No. No. More than one.

15          Q.       How many?

16          A.       At the very beginning, perhaps there were only  
17 two. And then later on, then there were more and more.

18          Q.       And we're talking about factories producing  
19 sunglasses for Jay-Y; is that right?

20          A.       Yes.

21          Q.       And after the factories created the samples,  
22 were those sent to the United States?

23          A.       Yes.

24          Q.       And did Jay-Y then make any effort to sell  
25 sunglasses based on those samples?



1 A. Of course. Of course.

2 Q. Were you in charge of that activity?

3 A. Yes.

4 Q. And what did you do to sell the sunglasses  
5 with logos on them?

6 A. I took them to trade shows to show them to  
7 customers. Or when customers came to our office, I also  
8 showed it to them there. And also we also sent samples to  
9 customers.

10 Q. Did you point out to Jay-Y's customers that  
11 Jay-Y sunglasses now had logos?

12 A. Yes.

13 Q. Did you find that the sunglasses with logos  
14 sold better than the sunglasses without logos?

15 A. Well, at the beginning it was more difficult  
16 because the customers cared about the price. But now, of  
17 course, it's proven that the way we were thinking was  
18 correct.

19 Q. Why do you say that the way you were thinking  
20 was correct?

21 A. Well, because now the clients know -- the  
22 customers know our brand, and they know that it comes from  
23 us, and then they know that our color and our quality  
24 control are pretty stable.

25 MR. WILTON: Could you read back the question

1 and the answer?

2 (The record was read.)

3 Q. BY MR. WILTON: Does Jay-Y still sell  
4 sunglasses with logos on them?

5 A. Well, currently, 99 percent of what we sell  
6 have a brand on it. But, well, with a logo on it,  
7 practically none.

8 Q. What's the distinction between a brand and a  
9 logo?

10 A. Well, we had applied for several brand names  
11 for ourselves, and then those would be on the sunglasses.  
12 So for where there were no brands on it, then there's  
13 nothing on it.

14 MR. LERNER: Can you read back the question  
15 and answer before that? I just want to make sure.

16 (The record was read.)

17 MR. WILTON: That's my job.

18 MR. LERNER: Go for it.

19 THE WITNESS: Can I add something to what you  
20 were asking?

21 Q. BY MR. WILTON: Let me see if can I ask some  
22 questions and get us where we need to be.

23 What do you mean when you use the term  
24 "brand"?

25 A. For example, now with our brands we have lens

1 stickers, we have our own hang tags. On the hang tags we  
2 have all UPC code then we also have some product bags --  
3 poly bags with our trademark on it. And then there are  
4 some -- we have the inner boxes a small box with our brand  
5 name on it as about -- it carries about a dozen glasses.  
6 Now for those I don't have our brands on it, then it's  
7 just a white box with the glasses inside.

8 Q. When -- let's use the -- let me ask a  
9 question. Does Jay-Y still use DG on its sunglasses?

10 A. Yes.

11 Q. And when you talk about lens stickers, does  
12 Jay-Y use DG on its lens stickers?

13 A. Yes. But in the very beginning it wasn't as  
14 complete, but now yes.

15 Q. And does Jay-Y currently use DG on its hang  
16 tags?

17 A. Yes.

18 Q. And when we were speaking earlier in 1992 and  
19 '93, I used the term "logo," and you used the term  
20 "brand." Did you interpret those to mean the same thing?

21 A. Yes.

22 Q. And I believe in your answer to the question  
23 with regard to brands you talked about poly bags that have  
24 trademarks on them. Do you recall that?

25 A. Well, when we first started we didn't have a

1 trademark. We didn't apply for one, so we didn't use it.  
2 But once we applied and got our trademark, then we started  
3 using it.

4 Q. I'm not sure that answers the question I  
5 asked.

6 I believe you testified that you -- Jay-Y  
7 currently uses poly bags that have a trademark on them; is  
8 that correct?

9 A. Yes.

10 Q. And when you refer to a trademark, are you  
11 referring to something that has been registered with the  
12 Federal government? Or are you referring to something  
13 else?

14 A. Oh, so I thought it was the same thing. So I  
15 thought a logo once it's registered becomes a trademark.  
16 Maybe I'm confused. Because to me, a trademark, a logo,  
17 and a name brand, they're all the same. I'm sorry.

18 Q. So in my line of questioning when we referred  
19 to logos, brands, and now trademarks, do you interpret  
20 those to all be the same thing?

21 A. Perhaps I am more confused. So to me when I  
22 put my own logo on it, it lets the customers know that  
23 it's my brand.

24 Q. So when Jay-Y put the CG logo on its  
25 sunglasses, did you consider that to tell customers that

1 CG was a brand of Jay-Y's?

2 MR. LERNER: Objection.

3 A. Yes.

4 MR. WILTON: What was your objection?

5 MR. LERNER: Foundation. I'm not sure how  
6 much testimony there was on it.

7 Q. BY MR. WILTON: When you made the decision to  
8 start using logos on Jay-Y's sunglasses, did you intend  
9 that those logos would distinguish Jay-Y's sunglasses from  
10 sunglasses made by other companies?

11 MR. LERNER: Objection.

12 A. Yes.

13 Q. Okay.

14 MR. LERNER: I mean, foundation and vague as  
15 to other.

16 MR. WILTON: Actually, can you read the  
17 question and answer back?

18 (The record was read.)

19 Q. Are you aware that Jay-Y has registered its DG  
20 logo as a trademark with the Federal government?

21 A. Yes.

22 MR. LERNER: Objection. Vague and foundation,  
23 "its DG logo."

24 Q. How many different -- are there more than one  
25 design of DG that is used by Jay-Y?

1 THE INTERPRETER: Can I have the question  
2 reread, please.

3 (The record was read.)

4 A. Yes.

5 Q. How many different designs are used?

6 A. There's just too many. There's no way to  
7 count it.

8 Q. Do you know whether Jay-Y has ever applied to  
9 register any of its DG designs with the Federal  
10 government?

11 A. Yes. Now are you talking about the trademark  
12 or the style?

13 Q. When you talk about style, what are you  
14 referring to?

15 A. The design patent.

16 Q. So you are making a distinction between the  
17 style of Jay-Y's sunglasses as a whole and the use of just  
18 DG on those sunglasses?

19 THE INTERPRETER: May the interpreter hear the  
20 question again, please?

21 (The record was read.)

22 A. I don't understand. Can you repeat?

23 Q. You mention a design patent. What is your  
24 understanding of what a design patent is?

25 A. Well, the design patent didn't have it before,

1 but now, let's see, if you make a design in that style,  
2 and you go and register that style, then nobody can sell  
3 that style.

4 Q. Does Jay-Y own any design patents?

5 A. We have some.

6 Q. Going back to the DG logos or marks, has Jay-Y  
7 ever applied to register DG as a trademark with the  
8 Federal government?

9 A. Yes.

10 Q. Do you know whether Jay-Y filed more than one  
11 application to register a DG mark with the Federal  
12 government?

13 A. Yes.

14 Q. Who at Jay-Y -- let me rephrase it. Yeah, who  
15 at Jay-Y decided to apply to register -- strike that.

16 How many applications has Jay-Y filed to  
17 register the DG mark with the Federal government?

18 A. Okay. That I handled, two. But afterwards,  
19 I'm not sure.

20 Q. When did you handle applications to register  
21 the DG mark with the Federal government?

22 A. In the year 2000 and 2001. Around there.

23 Q. Did anyone assist you with the preparation of  
24 the two applications to register the DG marks?

25 A. Yes. An attorney.

1 Q. Do you recall whether you -- okay. Strike  
2 that.

3 Who prepared the actual applications that were  
4 filed with the Federal government to register the DG  
5 marks?

6 A. The attorney.

7 Q. Do you recall whether you were ever asked to  
8 include information in those applications regarding the  
9 date Jay-Y first used the DG marks?

10 A. Yes.

11 Q. Do you remember what date you included in the  
12 applications -- strike that.

13 Do you remember what date of first use of the  
14 DG marks that you included in the applications to register  
15 the DG marks?

16 MR. LERNER: Objection.

17 A. Okay, the attorney told me that any date I put  
18 on would be okay as long as I remember when I used it.  
19 But prior to that we didn't have a UPC. But I think we  
20 started having the UPC on our hang tags probably around  
21 1999, around the end of 1999. So that was the date that I  
22 used as our date of first use. But we've been using it  
23 prior to that.

24 MR. WILTON: Could you read back the question  
25 and answer?



1 (The record was read.)

2 Q. BY MR. WILTON: I believe you testified that  
3 the attorney prepared the applications to register the DG  
4 marks; is that correct?

5 A. Yes.

6 Q. And were you the person that provided the  
7 attorney with the information that was included in the  
8 applications?

9 A. Yes.

10 Q. And were you the person that provided the date  
11 of first use of the DG marks for the applications that  
12 were filed in 2000 and 2001?

13 A. Yes.

14 Q. And did you base that date of first use on the  
15 date when Jay-Y first used hang tags in connection with  
16 its sunglasses that included the DG marks?

17 A. Yes.

18 Q. And at the time that those applications were  
19 filed, did anyone explain to you what the date of first  
20 use meant?

21 A. I was just told that I could just put any date  
22 on. And it was not really explained to me very clearly  
23 about the dates.

24 MR. WILTON: This isn't necessarily on the  
25 record. Any time you want to take a break, just tell me.

1 THE WITNESS: I would like to use the ladies  
2 room.

3 (Recess.)

4 Q. BY MR. WILTON: When Jay-Y was first formed in  
5 1983, how did it sell its products?

6 A. Well, at that time, because we had a retail  
7 store, so we did have customers who walked in. We also  
8 went to trade shows. And then there were also customers  
9 who got a catalog. And also my husband also drive to the  
10 swapmeets to see customers.

11 Q. In 1983 what trade shows did Jay-Y attend?

12 A. I believe that because it was too soon, in '83  
13 I don't think we went to any trade shows. I think it was  
14 probably either '84 or '85 that we started going to trade  
15 shows. And our first trade show was in Chicago.

16 Q. Did you go to that first trade show in  
17 Chicago?

18 A. Yes, because my husband's English was not  
19 good. Of course, you know, my English was not that good  
20 either, but it was better than his, so I went.

21 Q. Is that a yes?

22 A. Yes, I went.

23 Q. What kind of trade show was that first trade  
24 show in Chicago?

25 A. It was general merchandising.

1 Q. And in 1987, after you moved to the United  
2 States, how many trade shows did Jay-Y attend each year or  
3 in 1987?

4 A. At that time three, Chicago, New York, and  
5 Las Vegas. And Chicago we went three times a year. And  
6 in New York two times. And also two times in Las Vegas.

7 Q. So in 1987 Jay-Y attended seven trade shows?

8 A. Yes.

9 Q. And was the same true -- strike that.  
10 Does Jay-Y still attend seven trade shows a  
11 year?

12 A. No, now we only go to two in Las Vegas. We  
13 don't go to Chicago or New York anymore.

14 Q. When did Jay-Y stop going to trade shows in  
15 Chicago?

16 A. I don't remember. Perhaps ask my son. He'll  
17 probably know better.

18 Q. Do you know when Jay-Y stopped attending trade  
19 shows in New York?

20 A. I don't remember.

21 Q. Do you know whether Jay-Y was attending trade  
22 shows in New York in the year 2000?

23 A. I am not 100% sure, but I believe so.

24 Q. Do you know whether Jay-Y was attending trade  
25 shows in Chicago in the year 2000?

1           A.       The same answer. I'm not 100% sure, but I  
2 believe so.

3           Q.       Do you know or do you recall whether Jay-Y  
4 attended trade shows in Chicago each year from 1987  
5 through the year 2000?

6           A.       Did you want me to respond when or just say  
7 yes?

8           Q.       I'm not sure Mr. Lerner would appreciate it if  
9 I tell you exactly how to respond.

10                   Did Jay-Y attend trade shows in Chicago in  
11 1988?

12          A.       Yes.

13          Q.       And did Jay-Y attend trade shows in Chicago in  
14 1989?

15          A.       Yes.

16          Q.       And did Jay-Y attend trade shows in Chicago in  
17 1990 through 1995?

18          A.       Yes.

19          Q.       And did Jay-Y attend trade shows in Chicago  
20 between 1996 and the year 2000?

21          A.       Yes.

22          Q.       And with regard to New York, did Jay-Y attend  
23 trade shows in New York each year from 1987 through the  
24 year 2000?

25          A.       Yes.

1 Q. What did Jay-Y do at the trade shows between  
2 1987 and 2000?

3 MR. LERNER: Objection.

4 A. Do I still need to respond?

5 MR. WILTON: I would like to know what the  
6 objection is.

7 MR. LERNER: Vague and lack of foundation.

8 Q. Do you know what Jay-Y --

9 MR. LERNER: Come on. You knew when you asked  
10 it.

11 Q. Do you know what Jay-Y did at the trade shows  
12 that it attended between 1987 and 2000?

13 MR. LERNER: Same objection.

14 A. So do I still respond?

15 Q. Okay. Did you attend all of the trade shows  
16 that Jay-Y attended between 1987 and the year 2000?

17 A. Yes.

18 Q. And did Jay-Y have a booth at each of those  
19 trade shows that you attended?

20 A. Yes.

21 Q. And did Jay-Y display anything at the booths  
22 that it had at each of those trade shows?

23 A. Yes. Our show is at a certain time. And so  
24 before the show starts, we had to arrive the day before to  
25 set up and put out all of our samples so that on the day

1 of the show all of our customers can look at all of our  
2 products.

3 Q. So at each of the trade shows that Jay-Y  
4 attended from 1987 through 2000, did Jay-Y display samples  
5 of the sunglasses it was selling?

6 A. Yes. Of course. This is only way for the  
7 customers to look at our products and then make orders.

8 Q. After Jay-Y began using logos on its  
9 sunglasses, did Jay-Y display sunglasses with those logos  
10 at the trade shows it attended?

11 A. Of course.

12 Q. And with regard to the DG logo specifically,  
13 do you recall whether Jay-Y displayed sunglasses with the  
14 DG logos on them at trade -- at the 1994 trade shows?

15 A. I believe we did. Anything that we carried  
16 I'm sure we had displayed it so that the customers can  
17 look at them so that they could choose and make their  
18 orders.

19 Q. So did Jay-Y display all of its available  
20 sunglasses at the trade shows that you attended?

21 A. Yes.

22 Q. What kinds of customers or buyers attended the  
23 trade shows that Jay-Y attended that you attended as well?

24 A. For example, the wholesale district, the  
25 wholesalers, distributors, or retailers. Some sales

1 people who sell the products, perhaps they would purchase  
2 them, and then they will sell them in gas stations.

3 Q. Did Jay-Y actually sell sunglasses at trade  
4 shows or did it just take orders? Or did it do both?

5 MR. LERNER: Objection. Compound.  
6 Foundation.

7 Q. Well, let me break that up.

8 At the trade shows you attended between 1987  
9 and 2000, did Jay-Y take orders for sunglasses?

10 A. Well, the shows that we were at we are not  
11 allowed to sell retail. So we can only accept orders.  
12 And also that show was not open for consumers. You can't  
13 just like sell them retail one by one.

14 Q. So is it correct, then, that -- well, strike  
15 that.

16 At the trade shows that you attended between  
17 1987 and 2000, did Jay-Y take orders for sunglasses?

18 A. Of course. Our purpose of going there was to  
19 take orders.

20 Q. Does Jay-Y still attend trade shows?

21 A. Yes.

22 Q. Do you still attend trade shows?

23 A. Since 2004 I stopped participating in the  
24 management of the company. So my answer would be that,  
25 no, I don't go to shows anymore.

1 Q. What happened in 2004 that caused you to no  
2 longer be involved in the management of the company?

3 A. Because I had some health issues, and a doctor  
4 said that I needed to have some type of long term  
5 treatment.

6 Q. And did you have that treatment in the United  
7 States?

8 MR. LERNER: Objection.

9 Q. Did you have that treatment?

10 A. Yes.

11 MR. WILTON: A law school class here.

12 MR. LERNER: I've got to earn my keep, Ken.  
13 Keep you honest.

14 Q. BY MR. WILTON: Where were you treated?

15 A. Well, both my son and my husband felt that it  
16 would be best if I get -- stay far away from my work, so I  
17 went to Taiwan for treatment.

18 Q. And when you left in 2004, who took over  
19 running the company?

20 MR. LERNER: Objection.

21 Q. When you went to Taiwan in 2004 --

22 THE INTERPRETER: Did you want to hear the  
23 response?

24 Q. No. When you went to Taiwan in 2004, did you  
25 continue to be involved in the company?



1           A.       Are you asking about after my treatment and I  
2 came back or when during treatment? Because during my  
3 treatment, no.

4           Q.       How long did this treatment last?

5           A.       The doctor recommended that I had six month  
6 treatment. So from the time of diagnosis up until the  
7 time of recovery, I stayed in Taiwan for nine months.

8           Q.       And during those nine months, was somebody  
9 else running Jay-Y?

10          A.       Yes, because my treatment was quite  
11 exhausting. So my husband was by my side. So it was my  
12 son who took care of the company.

13          Q.       And by your "son," are you referring to Ward  
14 Chen?

15          A.       Yes.

16          Q.       So was Ward Chen running Jay-Y in 2004?

17          A.       Yes.

18          Q.       When did you return to the United States?

19          A.       2005.

20          Q.       And after you returned to the United States,  
21 did you take over running Jay-Y?

22          A.       Well, because I had liver problems, so I  
23 couldn't be too tired. So when I came back I didn't do  
24 anything.

25          Q.       Who was running Jay-Y in 2005?

1 A. Ward. Ward Chen, my son.

2 Q. And has Ward Chen been running Jay-Y since  
3 2004?

4 A. Yes.

5 Q. Do you still go -- well, after you returned to  
6 the United States in 2005, did you ever go back to the  
7 offices, Jay-Y's offices?

8 A. Yes.

9 Q. And how often did you in 2005 go back to  
10 Jay-Y's offices?

11 A. Well, at the beginning it was about one to two  
12 times a week. Work started at nine o'clock. I would get  
13 there around ten. And I would stay until about noon. So  
14 about half a day. Actually it was not even quite half a  
15 day.

16 Q. So in 2005 you came to Jay-Y's offices once or  
17 twice a week for about two hours?

18 A. Yes, around two to three hours.

19 Q. Did that schedule ever increase or decrease  
20 from 2005 through today?

21 A. Yes.

22 Q. And did it increase or decrease?

23 A. Decreased.

24 Q. When did it decrease?

25 A. I don't remember exactly, but I think it was

1 after 2008 that I started going less. Maybe '07, '08.

2 Q. And in 2008 how often did you go to Jay-Y's  
3 offices?

4 A. It decreased to once a week, and then  
5 sometimes when there was no problems or nothing to do then  
6 I may have gone maybe once every two weeks.

7 Q. And in 2008 do you recall what your schedule  
8 was at Jay-Y?

9 A. I also can't be sure. But because I've  
10 already decreased my time going there, I think it was  
11 probably once a week or even less than once a week.

12 Q. Do you recall how often you went to Jay-Y in  
13 2009?

14 A. It's about the same as 2008.

15 Q. And do you recall how often you went to Jay-Y  
16 in 2010?

17 A. It's about the same. Actually, I think -- I'm  
18 hoping that it's best that I don't even go at all. Of  
19 course they are managing it very well.

20 Q. When you do go to Jay-Y -- or let me rephrase  
21 that.

22 During the period from 2007 through 2010 when  
23 you went to Jay-Y, what did you do?

24 A. Actually when I'd go I would just take a look  
25 at the books and also see if my children need any help.

1 That's it. Which I really don't do very much.

2 Q. Have you ever heard of a company called Gado?

3 A. The first time I heard about this name was  
4 when my son told me about this issue with the trademark.  
5 That was the first time that I heard of this name.

6 Q. Do you recall when that was?

7 A. I can't be sure. Perhaps it was at the  
8 beginning of 2009.

9 Q. And who at Jay-Y is responsible for handling  
10 the dispute with Gado? Let me start with the foundational  
11 question.

12 Is there someone at Jay-Y who is responsible  
13 for handling the dispute with Gado?

14 A. My son, Ward Chen.

15 Q. And why is Ward Chen responsible for handling  
16 that dispute?

17 A. Well, because basically me and my husband  
18 we're considered semi-retired, so everything was pretty  
19 much handed to him to handle.

20 Q. Did Ward Chen ever ask you when Jay-Y first  
21 started using its DG marks?

22 A. Yes.

23 Q. And do you recall when he asked you that?

24 A. I am not really sure, but I believe it was  
25 probably around the beginning of 2009 when I found out

1 about this issue with Gado. I think that's when he asked  
2 me.

3 Q. And do you recall what you told Ward Chen when  
4 he asked you when Jay-Y first started using its DG marks?

5 A. I told him that we had started using it very  
6 early on.

7 Q. Did you tell him a specific year that Jay-Y  
8 started using its DG marks?

9 A. Well, I didn't specifically say which year  
10 because I wasn't sure. So I told him, but it was quite  
11 early on, perhaps around '92, '93, '94, around that time  
12 it was already used.

13 Q. After you told Mr. Chen that Jay-Y had used  
14 its DG marks early on, did you ever attempt to try to find  
15 the sunglasses that included the DG marks from that period  
16 of time?

17 A. Yes.

18 Q. And what did you do to find -- what did you do  
19 first in order to find those sunglasses?

20 A. Well, first I was trying to go back memory,  
21 and then I looked in my catalogs, and then I was trying to  
22 think about what we had at the time. And then I would try  
23 to get the styles and the numbers, and I made a list.

24 Q. And when you say you made a list, what did you  
25 make a list of?

1           A.       Well, I took a piece of paper, and I just  
2 wrote down the styles that might have the DG logos on  
3 them.

4           Q.       What did you do with that list?

5           A.       I would ask -- I went to the warehouse, and I  
6 asked someone at the warehouse or someone at the factory  
7 to look around to search to see were there any such  
8 samples and to see if my recollections were correct.

9           Q.       Going back to the list, what was listed --  
10 what was included on the list? Strike that. Let's see if  
11 I can phrase it a little better.

12                   With regard to the list you created, what was  
13 it a list of?

14           A.       Model numbers.

15           Q.       I believe you said you then asked someone to  
16 look for those model numbers in Jay-Y's warehouse; is that  
17 right?

18           A.       Yes, in our showroom as well as in our  
19 warehouses. And we also asked the factory to look in  
20 their showrooms and also in their sample rooms to look for  
21 them for us.

22           Q.       With regard to the warehouse, where is the  
23 warehouse located?

24           A.       Pomona.

25           Q.       And with regard to the showroom that you

1 referred to, where is that showroom located?

2 A. The one in the US is also in Pomona.

3 Q. So the warehouse and the showroom were in the  
4 same building; is that right?

5 A. Yes.

6 Q. Do customers come to Jay-Y's showroom?

7 A. Yes.

8 Q. And what does Jay-Y display in the showroom?

9 A. All of our samples, everything that we have in  
10 inventory is all the samples are there.

11 Q. And has Jay-Y always displayed all of its  
12 inventory in its showroom?

13 A. Yes. But we still kept some of products that  
14 are already passe.

15 Q. Passe?

16 A. That's old.

17 Q. Did Jay-Y find any models that were on your  
18 list in the showroom and warehouse in Pomona?

19 A. Yes.

20 Q. Did Jay-Y find all of the models that were on  
21 your list in its warehouse and showroom in Pomona?

22 A. Well, there was some that we couldn't find,  
23 but at the factory they were able to locate them for us.  
24 But that there were also some that were just gone that we  
25 couldn't find.

1 Q. With regard to the factory that you just  
2 talked about, is it one factory or more than one factory?

3 A. Several different factories.

4 Q. And was there somebody at Jay-Y responsible  
5 for asking the factories to look for the models on the  
6 list that you created?

7 A. I asked them to look.

8 Q. And I believe you said that the factories  
9 found some of the models on the list or all of the models  
10 on the list?

11 A. They were only able to locate some. There are  
12 still some that they couldn't find at all.

13 Q. Do you know why they were unable to find the  
14 models on the list that they were not able to find?

15 A. Because it was just too long ago. Well,  
16 because the time has passed, and it's been such a long  
17 time ago. So there may be a few things that may have  
18 gotten lost.

19 Q. I would like to show you --

20 MR. LERNER: Before we get started with those,  
21 I would like it use the men's room.

22 Q. I'm going to show you a box of sunglasses.  
23 And during the break I would like you to look through them  
24 and tell me whether these are the sunglasses that were  
25 located in Jay-Y's warehouse and showroom in the United



1 States as well as in the factories overseas. But don't  
2 answer that until after Mr. Lerner comes back.

3 (Recess.)

4 Q. BY MR. WILTON: During our break, did you get  
5 a chance to look at the sunglasses that are now arrayed on  
6 the table in front of you?

7 A. (In English) Yes.

8 Q. Do you recognize those sunglasses?

9 A. Yes.

10 Q. And what are they?

11 A. These are the glasses with the DG logos.

12 Q. And do you know are these glasses currently  
13 being sold by Jay-Y?

14 A. No. This is a style that's from a long time  
15 ago. None of this is sold currently. This is a very long  
16 time ago.

17 Q. Do you know when these models were sold?

18 A. Well, I just know that it's from '94 until  
19 about 2000. It's in that period of time, but I don't know  
20 which ones were sold during which year. That I don't  
21 know.

22 Q. Did you ever make any attempt to try to find  
23 out when the models of sunglasses that are on the table  
24 were sold?

25 A. I want to clarify. When the interpreter said

1 "I don't know," it's not that I don't know. I mean that I  
2 can't remember.

3 Q. Okay.

4 A. That's from the question --

5 Q. The previous question. Okay. Let's start  
6 over again.

7 So do you recall when the sunglasses that we  
8 have on the table in front of us were sold?

9 A. I just know that it was between '94 to 2000,  
10 in that time period.

11 Q. Did you ever try to find out when the  
12 sunglasses that we have on the table were actually sold?

13 A. Yes.

14 Q. And what did you do to determine when those  
15 sunglasses were sold?

16 A. Well, we have a computer system. So I had to  
17 go into the computer to find out about them. It was from  
18 memory. There's just no way I could remember that.

19 Q. What kind of computer system are you talking  
20 about?

21 A. Well, we used SBT. This is something that I  
22 don't know about. I don't have any knowledge about. So  
23 we do have a computer consultant who helped us with this.

24 Q. What is SBT?

25 A. Well, that was a computer system, but we no

1 longer use that anymore. After Ward took over, it was  
2 changed to another system. I think it's called MAS 90,  
3 but I also don't understand the system. It's outside of  
4 my knowledge.

5 Q. Ward took over managing the company in 2004;  
6 is that right?

7 A. Yes.

8 Q. And sometime after Ward took over managing the  
9 company, Jay-Y started using a new computer system; is  
10 that right?

11 A. Yes. But which year did he make the switch, I  
12 don't know. You'd have to ask him.

13 Q. And but prior to Ward Chen taking over the  
14 management of the company, the company was using a  
15 computer system called SBT; is that right?

16 A. Yes.

17 Q. When did Jay-Y start using a computer system  
18 called SBT?

19 A. I can't be exactly sure, but I believe it was  
20 in '93.

21 Q. What did the SBT computer system do?

22 A. I believe it was already a prewritten program,  
23 but then the consumers would be asked, you know, how we  
24 ran our operation. So based on that they may have made  
25 some additions or rewrites to match our operation. So for

1 us when taking orders from customers, shipping orders, and  
2 the accounting, all of that was done on the computer.

3 Q. So when Jay-Y took an order from a customer  
4 for sunglasses between about 1993 and whenever Ward Chen  
5 changed to a new system, was that -- were the details of  
6 that order inputted into the SBT system?

7 A. Yes.

8 Q. Do you recall what -- strike that.

9 Who was responsible for inputting the details  
10 of a customer order into the SBT system?

11 A. If it was a purchase order from a customer,  
12 then it would be the salesperson's responsibility. But if  
13 it was to receive merchandise or importing the merchandise  
14 that -- or bringing in the merchandise, that would be the  
15 responsibility of the accountant. And if the products  
16 were to be shipped and invoiced, that was the  
17 responsibility of the warehouse people.

18 Q. So breaking that down, if a customer of  
19 Jay-Y's called asking to purchase merchandise, the details  
20 of that order from the customer would be put into the SBT  
21 system by a salesperson; is that correct?

22 A. Yes. What would be inputted and printed out  
23 would be a sales order.

24 Q. Were there specific categories of information  
25 that needed to be put into the system when an order was

1 taken?

2 MR. LERNER: Objection. Vague as to "needed."

3 Q. How many salespeople did Jay-Y have in 1993?

4 A. It's been such a long time. I don't quite  
5 remember. But there weren't many, perhaps two or three.

6 Q. Do you recall whether those salespeople were  
7 trained regarding how to use the SBT system?

8 A. Well, the consultant did come to teach us, but  
9 the salespeople they would only learn the portion where  
10 they have to type in the sales order. And then for the  
11 warehouse people they would only have to learn the part  
12 where how they could add the shipping and then send out  
13 the invoice. And then the accounting people would learn  
14 what they needed to learn.

15 Q. Did you ever put in the details of a sales  
16 order into the SBT system?

17 A. Yes, because I also did sales.

18 Q. Do you recall whether the system asked you to  
19 type in certain types of information?

20 A. Is he asking me about the sales orders?

21 Q. Yes.

22 A. Well, we have to type in the order date by the  
23 customer, and then we also type in the customer's name.  
24 After typing in the name, then the system would  
25 automatically display the customer's address. Sometimes

1 the shipping address would be different, so we would have  
2 to verify the shipping address. And then we would have to  
3 type in the model number and the quantity ordered and also  
4 how much we were selling them for.

5 Q. After the information you just described was  
6 typed into the computer system, what happened next with  
7 regard to a sales order?

8 A. Then we would take the sales order to the  
9 warehouse and let the people in the warehouse prepare the  
10 products.

11 Q. When you say "take the sales order," do you  
12 mean print out a copy of it, send it by computer or  
13 something else?

14 A. Yes, as printed out.

15 Q. And when you mentioned the warehouse preparing  
16 the order, what did the warehouse do with regard to the  
17 sales order?

18 A. Well, they would follow the sales order. They  
19 would do the packaging. And sometimes if it's a complete  
20 case -- because one case will have 25 boxes or -- 25  
21 dozen. There's one dozen in one box. And then after --  
22 sometimes it's not 25, so they would have to repackage and  
23 everything.

24 And then if it was a big order, then they  
25 would have to call the trucking company. Or if it's -- or

1 they would have to call UPS, then they would have to add  
2 the shipping charge. And then they would issue an  
3 invoice. UPS would come every day to our warehouse to  
4 pick up products.

5 Q. Let me try to break that up a little.

6 After an order came in through a salesperson,  
7 that person would type the information that you described  
8 into the SBT system; is that correct?

9 A. Yes.

10 Q. And that information would include the order  
11 date, customer name, shipping address, model numbers  
12 ordered, and quantity ordered, and price; is that correct?

13 A. Yes.

14 Q. And all of that information would be in the  
15 SBT computer system; correct?

16 A. Yes.

17 Q. And then someone would print out a copy of  
18 that order from the SBT system; is that correct?

19 A. The salesperson would print the sales order.

20 Q. And the salesperson would print the sales  
21 order from the SBT system; is that right?

22 A. Yes.

23 Q. And would the salesperson then take the sales  
24 order and walk it over to the warehouse?

25 A. Yes.

1 Q. And then someone in the warehouse would start  
2 to pull together all of the model numbers and quantities  
3 that were on the sales order; is that right?

4 A. Yes.

5 Q. Then the person in the warehouse would arrange  
6 for the shipping of the entire order to the customer; is  
7 that right?

8 A. Yes.

9 Q. And then the person in the warehouse would be  
10 responsible for creating an invoice to be sent to the  
11 customer together with the order; is that right?

12 A. Well, there were three copies made. One copy  
13 would be given to the customer to take away, and then the  
14 next copy would be given to the accounting department or  
15 the accountant. And then the third copy would be given  
16 back to the salesperson so that the salesperson would know  
17 what was ordered by this customer.

18 Q. In order to create the invoice that went to  
19 the customer, would the warehouse person use the SBT  
20 computer system?

21 A. Well, actually it's quite simple. All they  
22 have to do is type in the sales order number. Then the  
23 sales order would print out. And if it is picked up by  
24 UPS, then all they have to do is add in the shipping  
25 charges by UPS. So that's all added in there. So it's



1 quite simple. They don't really need a lot of knowledge  
2 to do that portion.

3 Q. Did they use the SBT computer system to create  
4 that invoice?

5 A. Yes. Everything is connected -- was  
6 connected.

7 Q. So from the warehouse side, whoever created or  
8 packaged the sunglasses to be shipped would they go to a  
9 computer and type in the sales number or did they ask  
10 somebody else to do that?

11 A. It's the warehouse person that inputs that in  
12 themselves. Like I said earlier, everybody did their own  
13 or learned their own area.

14 Q. When a customer paid for an order, where would  
15 the payment go? Probably a bad question. Let me try that  
16 again.

17 MR. LERNER: It's scary now. I don't even  
18 have to...

19 MR. WILTON: Yeah, I've got this little Mark  
20 Lerner sitting on my shoulders objecting in my ear. It's  
21 really strange. My wife is going to wonder.

22 Q. BY MR. WILTON: During the period from about  
23 1993 through 2000, was Jay-Y paid after it shipped an  
24 order or before it shipped an order?

25 A. Both.

1 Q. Was Jay-Y paid before the sales order was  
2 created in any of these situations?

3 A. Yes, but that was quite seldom.

4 Q. With regard to the situations where Jay-Y was  
5 paid after the sales order was created, how was a payment  
6 to Jay-Y processed?

7 A. Are you talking about after they received the  
8 order or when they prepay?

9 Q. After they received the order.

10 A. They mail a check to us.

11 Q. And when Jay-Y received a check during the  
12 period from 1993 through 2000, what would happen to that  
13 check first at Jay-Y?

14 A. Well, the accountant would first go into the  
15 computer. It would pull in a customer, and then it would  
16 match the check with the invoice. And then if they would  
17 first credit that invoice -- not credit but deduct that  
18 invoice, and then the check then would be deposited.

19 Q. And who was responsible for doing that?

20 A. Accountant.

21 Q. And is this an accountant that is employed by  
22 Jay-Y?

23 A. Yes.

24 Q. And you mentioned that the accountant would go  
25 to the computer. Are you referring to the SBT computer

1 system?

2 A. Yes.

3 Q. And the accountant would use the SBT computer  
4 system to determine where the payment should be credited;  
5 is that right?

6 A. Yes.

7 Q. And I believe you talked about using the SBT  
8 system with regard to Jay-Y's purchases. Let me strike  
9 that. o.

10 Was the SBT computer system used with regard  
11 to Jay-Y's purchases of sunglasses?

12 A. Yes.

13 Q. And can you please describe the process by  
14 which the SBT computer system was used with regard to  
15 Jay-Y's purchases of sunglasses?

16 A. Well, it's the same. We would type a purchase  
17 order. We would type in a purchase order date, the  
18 quantity, the unit price, and then it would become a  
19 purchase order. When the shipment arrives, then we would  
20 check the quantity, and then we would key in the  
21 information and do the work as receipt of merchandise.

22 Q. Who at Jay-Y during the period from 1993 to  
23 2000 was responsible for typing in the information with  
24 regard to purchases?

25 A. The accountant.

1 Q. And if I understand correctly, the accountant  
2 -- strike that.

3 Was there some sort of form on the SBT  
4 computer system that the accountant would fill in with  
5 regard to purchases?

6 A. Yes.

7 Q. And did that form include the date of the  
8 purchase order, the quantity of the goods, the unit price,  
9 the landed price for the goods?

10 THE INTERPRETER: The landed price?

11 Q. Do you know what a landed price is? I will go  
12 ahead and ask the foundational question.

13 A. Yes. Yes, landed cost would include the ocean  
14 freight, the import duty, the inland trucking, the custom  
15 broker fee, and FOB. So that would be added as an  
16 expense, plus FOB cost. And that would equal to the  
17 landing cost.

18 Q. And what is the FOB cost?

19 A. That's the price that we purchase from the  
20 factory.

21 Q. And after the information with regard to a  
22 purchase was typed into the SBT system, what happened to  
23 that information?

24 A. Well, then we wait until we receive the  
25 shipment, and then we would check the shipment to see if

1 the quantity was correct. And then after that we would do  
2 the receipt of shipment process.

3 Q. And what is the receipt of shipment process?

4 A. Well, like I said earlier, when the purchase  
5 arrived, we would unload it, then check it, check the  
6 model number, the quantity and FOB number to make sure  
7 everything matches. And if everything did, then we would  
8 do a double check. And then after that we would do -- we  
9 will receive it, and then the computer would then process  
10 it as a receipt.

11 Q. When a shipment was received, who was  
12 responsible for checking the quantity and model number of  
13 the sunglasses received?

14 A. The warehouse person.

15 Q. And did the warehouse person use the purchase  
16 order in the SBT computer system in order to check the  
17 quantity and model number?

18 A. Yes.

19 Q. And if the warehouse person determined that  
20 the quantity received and the model numbers received  
21 matched the purchase order, what would they do?

22 A. Then that person would give the bill to the  
23 accountant, who then would do the receiving process.

24 Q. When you say the warehouse person would give  
25 the bill to the accountant, what do you mean?

1           A.       I didn't say a bill. I said -- what I meant  
2 was the list of the merchandise that arrived.

3           Q.       So would the warehouse person work off a  
4 printed copy of the purchase order or a copy that's in the  
5 SBT computer system?

6           A.       Actually, when the factory oversees when they  
7 ship the shipment, then there is a piece of -- a document  
8 that was shipped with it. And in there there are --  
9 there's the invoice as well as the packing list. And then  
10 so this would be given to the shipping department. So  
11 after they verified everything was correct, then these  
12 would be given to the accountant.

13          Q.       Is the shipping department the same as the  
14 warehouse person you were talking about?

15          A.       It's the warehouse. Yes. It's the warehouse.

16          Q.       So the warehouse -- back up.

17                 When a shipment is received, it comes with  
18 documents, such as a shipping invoice and a packing list;  
19 is that right?

20          A.       Yes.

21          Q.       And the warehouse person would use the packing  
22 list to check against the actual goods that were received;  
23 is that right?

24          A.       Yes.

25          Q.       And after going through the packing list and

1 determining whether or not all the goods were received,  
2 the warehouse person would provide that document to the  
3 accountant; is that right?

4 A. Yes.

5 Q. And what would the accountant do with that  
6 information?

7 A. Well, then the accountant would in the  
8 computer would do one by one the receiving process.

9 Q. What is the receiving process?

10 A. Well, the accountant would from the computer  
11 pull up the model number. For example, let's say if 500  
12 dozen were ordered, and we only received 300, then that  
13 would be typed in as a partial shipment. And then the  
14 quantity that was received would then be typed in. If it  
15 was a complete shipment, then it would be typed as a  
16 complete shipment, and then the accountant would also have  
17 to add all the additional fees, such as FOB fee and all  
18 the other miscellaneous fees. And that would be the  
19 ending cost for the shipment. And then the accountant  
20 would then do the receiving work.

21 Q. So you mentioned that the first part, the  
22 importation process, is the creation of a purchase order  
23 -- strike that.

24 Prior to the goods being received by Jay-Y,  
25 the accountant typed in the purchase order information for

1 that shipment; is that right?

2 A. No. Normally they were to make an order. We  
3 would first type in the purchase order.

4 Q. So the purchase order would be information  
5 that would be typed in before the order was made; is that  
6 right?

7 A. After we make the order, then we typed the  
8 purchase order.

9 Q. When Jay-Y placed an order from sunglasses  
10 from one of the factories that manufactured sunglasses for  
11 it, it would first place the order, and then the  
12 accountant would type in the order information into the  
13 SBT system; is that correct?

14 A. Yes.

15 Q. And did each purchase order have its unique  
16 number assigned to it?

17 A. Yes.

18 Q. And after the shipment was received, and the  
19 warehouse went through the packing list and gave that list  
20 to the accountant, would the accountant pull up the  
21 original purchase order by the number that it was given  
22 initially?

23 A. No.

24 Q. What did the accountant then do with the  
25 packing list information that the warehouse had created?



1           A.       Well, because when we make a purchase, a  
2 purchase order, for some it would be a complete order.  
3 Then you can put it -- so you could key it in. But  
4 because when we -- usually when we place our orders we  
5 place it at any time, so when the purchase comes in  
6 there's really no way for us to just type in the purchase  
7 order number. So we have to purchase -- correction -- we  
8 have to key in the model number.

9           Q.       And what information was pulled up by the  
10 accountant by keying in the model number?

11          A.       In the computer, the computer system gives you  
12 the choice of keying in by purchase order number or model  
13 number. So we would choose to type -- key in the model  
14 number. And then what it shows it will show what orders  
15 are pending or would show how many orders have been made  
16 for this model. And then it would be cleared according to  
17 in chronological order of the order.

18          Q.       So the accountant would then key in the model  
19 number, and, using the packing list information, determine  
20 whether the order -- the first order for that model number  
21 had been fulfilled or not; is that right?

22          A.       That's what I mean. So how it works is that  
23 whatever was ordered first, then that shipment would be  
24 received first.

25          Q.       And after the accountant typed in the

1 information regarding the shipment and the shipping costs,  
2 did the accountant then take any steps to pay the factory  
3 for the goods that were shipped?

4 A. Yes.

5 Q. And would the accountant also use the  
6 information that was typed into the SBT computer system to  
7 pay the shipping companies?

8 A. Yes.

9 Q. During the period from 1993 through 2000, did  
10 Jay-Y pay corporate income taxes?

11 A. Of course. We had to.

12 Q. And in order to prepare Jay-Y's income tax  
13 forms, did Jay-Y use the information from the SBT computer  
14 system to determine its revenue received and costs of the  
15 goods that it sold?

16 A. Of course. We would give this information to  
17 the CPA.

18 MR. WILTON: Why don't we take a lunch break.

19 (Luncheon recess 12:54p.m. to 2:15 p.m.)

20 Q. BY MR. WILTON: Back on the record.

21 Ms. Chen, during the morning we talked about  
22 the fact that you went about gathering sunglasses from  
23 both Jay-Y's warehouse and showroom as well as the  
24 factories, warehouses, and showrooms. Do you recall that?

25 A. Yes.

1 Q. And those are the sunglasses that are arrayed  
2 on the table in front of you; is that correct?

3 A. Yes.

4 (Exhibits 100-130 marked for identification.)

5 Q. I would like to show you what we've premarked  
6 as Exhibits 100 through 130, which are photographs of  
7 sunglasses, and ask you to take a quick look through them.

8 And while you're going through the  
9 photographs, if you can keep in mind my question will be:  
10 Are these true and correct photographs of the sunglasses  
11 that are on the table in front of you?

12 A. Yes.

13 MR. WILTON: I would like to move these  
14 exhibits into evidence.

15 Q. BY MR. WILTON: With regard to some of the  
16 sunglasses that are in front of you, you'll notice that a  
17 few of them have labels on the front lens. Do you see  
18 that?

19 A. Yes.

20 Q. Let's look at one of them. This one, for  
21 example, which the front of the lens says 2311HP/R. Do  
22 you see that?

23 A. Yes.

24 Q. And if you open up the pair of sunglasses, you  
25 will see a number on the temple. Do you see that?

1 A. Yes.

2 Q. And what is that number?

3 A. 2311HP.

4 Q. And what does that number signify?

5 A. It represents this model. HP refers to this  
6 plastic frame.

7 Q. And what does the number 2311 refer to?

8 A. The style or model.

9 Q. Do all of the sunglasses sold by Jay-Y have a  
10 model number?

11 A. Yes.

12 Q. And are all the model numbers unique to each  
13 style of sunglass?

14 A. Yes.

15 Q. In the pair of sunglasses that we're looking  
16 at, on the label it has a /R. Do you see that?

17 A. Yes.

18 Q. And what does that mean?

19 A. It represents -- if means that the lenses is a  
20 regular lens.

21 Q. And what is the other -- what are the other  
22 options for a lens other than regular?

23 A. For example, if it says M, it means mirror  
24 lens. If it says CM, it means colored mirror lens.

25 Sometimes FM means flash mirror lens.

1 Q. Other than M, CM, FM, and R are there any  
2 other options for lenses?

3 A. Sometimes SD would refer to super dark lens.

4 Q. Are there any other options for lenses?

5 A. Others? I don't remember.

6 Q. With regard to the number we saw on the temple  
7 of the sunglass we were just looking at, who put that  
8 number on the sunglass?

9 A. It was placed in the factory during  
10 production.

11 Q. And earlier when we were talking about the  
12 receipt of sunglasses by Jay-Y and the sale of sunglasses  
13 by Jay-Y, we talked about model numbers. Do you remember  
14 that?

15 A. Yes.

16 Q. And are the model numbers we were talking  
17 about with regard to the SBT computer system, are those  
18 the same model numbers that appear on the side of each of  
19 the sunglasses sold by Jay-Y?

20 A. Yes.

21 Q. So if Jay-Y sold a pair of sunglasses with the  
22 model number 2311HP, is it possible to search the SBT  
23 computer system to determine when those sunglasses were  
24 sold?

25 A. Yes. Whenever it was received and whenever it

1 was sold.

2 Q. And would the SBT computer system include data  
3 for every time a 2311HP model was received or sold?

4 A. Yes.

5 Q. And is the same true with regard to every  
6 model of sunglass sold by Jay-Y between 1993 and the year  
7 2000?

8 A. Yes.

9 Q. Prior to the break we talked about the fact  
10 that you were able to locate the sunglasses that appear on  
11 the table and that we have photographs of in Exhibits 100  
12 to 130. Do you recall that?

13 A. Yes.

14 Q. After receiving the physical sunglasses, did  
15 you take any steps to try to determine when Jay-Y sold  
16 each of the models of sunglasses that we are looking at  
17 today?

18 A. I tried, but I didn't know how to search it.  
19 So I called our computer consultant and asked the  
20 consultant to show us how to search for it.

21 Q. What did you ask the consultant -- strike  
22 that.

23 What specifically did you ask the consultant  
24 to do with regard to these 31 pairs of sunglasses?

25 A. Well, I asked the consultant, because we have

1 so many records, was there any way to pull out all the  
2 purchase orders and sales orders records and then to  
3 generate a report of what we have sold.

4 Q. Did you ask the consultant whether that could  
5 be done with regard to the specific models of sunglasses?

6 A. Yes. I had given him the model numbers on  
7 these sunglasses that I got and have them search on the  
8 computer for the records.

9 Q. And when you refer -- just to make our record  
10 clear, this record clear, when you refer to "these  
11 sunglasses," you're referring to the sunglasses that we  
12 have photographs of as Exhibits 100 to 130; is that  
13 correct?

14 A. Yes.

15 Q. So did you give the consultant a list of the  
16 model numbers for each of these 31 pairs of sunglasses?

17 A. Yes.

18 Q. And did the consultant perform any searches on  
19 the computer system?

20 A. Yes.

21 Q. And do you know whether the consultant was  
22 able to find any records with regard to any of the model  
23 numbers for the sunglasses that we are looking at today?

24 A. Yes. He went in there. Yes.

25 Q. And do you know whether the consultant printed

1 anything out as a result of his searches?

2 A. Yes.

3 (Exhibit 131 marked for identification.)

4 Q. I would like to show you what we'll mark as  
5 Exhibit 131.

6 A. Yes. These are the purchase -- this is the  
7 purchase history report.

8 Q. Let me ask my question. What is this?

9 Well, have you seen this document before?

10 A. In the past I hadn't seen it because I didn't  
11 need it, but because of the deposition and we needed to  
12 make these -- we need to print this out. So that's when I  
13 saw it.

14 Q. So when did you first see this document?

15 A. I believe it was after the beginning of 2009,  
16 but exactly when I don't remember.

17 Q. Did you supervise the computer consultant when  
18 he searched through the SBT computer records?

19 A. Well, I couldn't supervise him or instruct him  
20 because that was not within my knowledge. He knew the  
21 computer system better than I did.

22 Q. Did you watch him search the computer system?

23 A. Yes.

24 Q. And did you watch him print out any papers  
25 from the computer system?



1 A. Yes.

2 Q. And is Exhibit 131 one of the documents that  
3 the computer consultant printed from the computer system?

4 A. Yes.

5 (Exhibit 132 marked for identification.)

6 Q. I would like to show you what we'll mark as  
7 Exhibit 132.

8 (A discussion was held off the record.)

9 Q. BY MR. WILTON: We're now looking at Exhibits  
10 131 and 132. Have you seen the documents that are  
11 collected as Exhibit 132?

12 A. Yes.

13 Q. What are they?

14 A. These are the import information. It's got  
15 the shipping invoice and the bill of lading. It's just  
16 these right now. But if you want a more complete set,  
17 such as a packing list, an FDA certification, or the  
18 custom taxes, we can -- we have kept that. But what we  
19 copied it wasn't included in here.

20 MR. WILTON: What was my question?

21 (The record was read.)

22 Q. BY MR. WILTON: What are the documents that  
23 are collected as Exhibit 132?

24 A. These are the invoices that the factory have  
25 sent us when they shipped out the products. And it's an

1 invoice. You can also say that these are the invoices and  
2 the bill of lading when we received the goods.

3 Q. These are copies of documents; is that right?

4 A. Yes.

5 Q. Do you know where the original versions of the  
6 documents collected as Exhibit 132 are?

7 A. It's in our company. If there's a copy, then  
8 we have the originals.

9 Q. And I believe you testified that when a  
10 shipment arrives it includes certain documents, such as an  
11 invoice, a packing list, and shipping documents; is that  
12 right?

13 A. Some bill of lading.

14 Q. Just a bill of lading?

15 A. There will also be a bill from the custom  
16 broker and also an FDA certificate, and also the custom  
17 duties, the bill for the customs duties.

18 Q. Looking at the first page of Exhibit 132, what  
19 kind of document is that?

20 A. This is the invoice that's sent out by the  
21 factory.

22 Q. Does the factory create the original copy of  
23 the invoice?

24 A. Yes.

25 Q. And does the factory with regard to each

1 shipment send an invoice to Jay-Y?

2 A. Yes.

3 Q. Does Jay-Y keep those invoices in a file in  
4 its offices?

5 A. Yes.

6 Q. With regard to the first page of Exhibit 132,  
7 did that -- is the original of that page in a file kept at  
8 Jay-Y?

9 A. Yes.

10 Q. With regard to the remaining pages of Exhibit  
11 132, are the original copies of those pages kept in files  
12 at Jay-Y?

13 A. Yes. But I must say what you refer to as the  
14 original, it would still look like this because it was  
15 sent to us via fax. So up here you can see that there is  
16 a fax date and information. So these were generated by  
17 fax.

18 Q. So with regard to the first two pages of  
19 Exhibit 132, were those pages faxed to Jay-Y on or about  
20 March 22nd, 1996?

21 A. Yes.

22 Q. And were the printouts of that fax put into  
23 Jay-Y's files sometime around March of 1996?

24 A. Yes.

25 Q. And is the same true with regard to all

1 the rest of the documents in Exhibit 132; that they were  
2 put in Jay-Y's files soon after they were received by  
3 Jay-Y?

4 A. Yes.

5 Q. I would like you to take a look at Exhibit  
6 131. First of all, the cover page, is that something that  
7 was printed out from the computer system?

8 A. No. This is after it was generated. Then I  
9 made the cover.

10 Q. Turning to the second page. I would like to  
11 look at the first line that starts with 960030. Do you  
12 see that?

13 A. Yes.

14 Q. And I believe you testified that this  
15 information was printed out from the SBT computer system;  
16 is that right?

17 A. Yes.

18 Q. And who put this information into the SBT  
19 computer system?

20 A. Well, like I had said earlier, let's say if I  
21 were the one to place the order, then I would input it.  
22 But after 2004 when my son took over, then he would type  
23 it in. But then when the goods were received, then it was  
24 the accountant who input it.

25 Q. So the original purchase order information

1 would be input by you between 1993 and 2000?

2 A. Yes.

3 Q. And then the accountant would update that  
4 information based on what was actually received from the  
5 factory; is that right?

6 A. Because when I input it, it was just a  
7 purchase order. There was no inventory to be sold. So we  
8 had to wait for the goods to be received. Then the  
9 accountant can input that. Then that becomes inventory  
10 that is ready to be sold.

11 Q. And if we look at the first page of Exhibit  
12 132, do you see a handwritten number on the top right-hand  
13 side of that page?

14 A. I see it.

15 Q. And that number is 96-25; is that right?

16 A. Yes.

17 Q. Who wrote that?

18 A. The person who came up with this number, it  
19 was the accountant who came up with the number. But when  
20 I was preparing this, I had written this number on that  
21 corner. This represents 1996, the 25th shipment.

22 Q

**REDACTED**

23

24

25

1 A. **REDACTED**

2 Q. **REDACTED**

3

4 A. Yes.

5 Q. And the next column says Item No. 252A. Do  
6 you see that on the History Report?

7 A. Yes.

8 Q. And is that item number appear on the invoice  
9 which is the first page of Exhibit 132?

10 A. Yes. It's right here.

11 Q. And you're referring to the last line of  
12 Exhibit 132; is that right?

13 A. Yes.

14 Q. And the quantity that says 150, do you see  
15 that on the History Report?

16 A. Yes.

17 Q. And is that the same quantity that appears at  
18 the bottom of the first page of Exhibit 132?

19 A. Yes.

20 Q. And who would have input the quantity number  
21 into the SBT computer system?

22 A. It's my accountant. When my accountant was  
23 doing the receiving process, that's when it was inputted.

24 Q. And the next column refers to -- it says REC  
25 Date. And I'm referring to Exhibit 131, 4396. What does

1 that column mean?

2 A. That is the receiving date.

3 Q. And is there anything in Exhibit 132 that  
4 reflects the receiving date or receipt date of that  
5 shipment?

6 A. No, because this date on the top is the date  
7 that it was shipped from Taiwan. And then the ship had to  
8 float in the ocean for a while, and then you have to go  
9 through Customs. This is the date -- this was the date  
10 when the shipment arrived at the warehouse.

11 Q. And in the normal course of business, about  
12 how long after a shipment arrived at Jay-Y did the  
13 accountant input the receiving information as you've  
14 described it?

15 A. Well, generally we would request -- require to  
16 be on the same day, but if the container truck arrived too  
17 late, then it may be delayed until the next day.

18 Q. Was it ever delayed more than a week between  
19 the time Jay-Y received a shipment and the data regarding  
20 that shipment was input into the SBT computer system?

21 A. No, it's not possible. It's either the same  
22 day or the next day.

23 Q. And the FOB cost column on Exhibit 131, the  
24 first line says 7.000. Do you see that?

25 A. Yes.

1 Q. Does that cost -- does that number correspond  
2 to anything on the first page of Exhibit 132?

3 A. Yes. This is the price that was shipped when  
4 it left the factory.

5 (In English:) That's the price we buy from  
6 factory price factory ship to us.

7 Q. With regard to the next column of Exhibit 131,  
8 there's a line item that says Landed Cost. Do you see  
9 that?

10 A. Yes.

11 Q. Does that number appear on any of the  
12 documents included in Exhibit 132?

13 A. Well, over here I don't, but in my office we  
14 have the Customs duties document, as well as the broker  
15 agent the bill, as well as ocean freight fees. All of  
16 that would be a combination of adding the fees up and then  
17 getting an average.

18 Q. So Jay-Y added up all the fees for shipping  
19 the product from the factory to the United States and just  
20 divided that cost by the number of items shipped and  
21 applied it to each of those items; is that right?

22 A. Now, I don't know how that is done, but in the  
23 computer you have a place where you input all your  
24 miscellaneous fees, and then in the computer, once that's  
25 inputted, the computer, perhaps using the unit price, was



1 able to figure out once you inputted all the numbers in  
2 there. It was able to figure out this number.

3 Q. The landed cost number?

4 A. Yes.

5 Q. And the total cost column of the purchase  
6 history report, which is Exhibit 131, is that number also  
7 calculated within the computer?

8 A. Yes.

9 Q. And?

10 A. Because the CPA would use this number for the  
11 books.

12 Q. And this you're referring to -- strike that.

13 Jay-Y's CPA would use the total cost figure  
14 for each line item in order to reconcile Jay-Y's books; is  
15 that right?

16 A. Yes. At the end of the year when we give this  
17 information to the CPA, this is the number that we use.

18 Q. Use for what?

19 A. (In English) Inventory Report.

20 Q. And the total cost figure, is that a number  
21 that is used by Jay-Y to determine the costs of the goods  
22 that it sold?

23 A. Yes.

24 Q. Just so I understand the process, the computer  
25 -- the first thing that happened after you obtained the

1 samples of the sunglasses was the computer consultant  
2 printed out the purchase history report by item; is that  
3 right?

4 A. Yes.

5 Q. And after you obtained this printout, did you  
6 then go to Jay-Y's records to find the original shipping  
7 documents?

8 A. Yes.

9 Q. And did you then make copies of those  
10 documents?

11 A. Yes.

12 Q. And are those, at least with regard to this  
13 Exhibit 131, is Exhibit 132 a copy of the documents that  
14 you copied?

15 A. Yes.

16 Q. And so the documents included in Exhibit 132  
17 correspond with each of the line items that we see on  
18 Exhibit 131?

19 A. Yes.

20 Q. Let me direct your attention to the second  
21 page of 131. Do you see a line item that says missing  
22 shipping documents?

23 A. Perhaps it wasn't kept completely. For that  
24 shipment there were some documents that were missing.

25 MR. WILTON: I would like to move for the

1 admission of Exhibit 131 and 132.

2 MR. LERNER: I will object because I'm not  
3 sure there's been a full foundation. I may have some  
4 questions.

5 MR. WILTON: I tell you what. Off the record  
6 for a second.

7 (A discussion was held off the record.)

8 Q. BY MR. WILTON: Did you ask the computer  
9 consultant to print out Purchase History Reports for the  
10 models of the glasses shown in exhibits 100 through 130  
11 for any years other than 1996?

12 A. Yes.

13 Q. What other years?

14 A. I asked the consultant to print out everything  
15 that was prior to the year 2000, to print all of those  
16 out.

17 (Exhibit 133 marked for identification.)

18 Q. I would like to show you what we'll mark as  
19 Exhibit 133. Have you ever seen this document before?

20 A. Yes.

21 Q. And what is it?

22 A. It's the Purchase Record Report.

23 Q. And who created this document?

24 A. The computer consultant.

25 Q. And do you know how the computer consultant

1 created the Purchase History Report that is the second  
2 page of Exhibit 133?

3 A. He had located this information in the  
4 computer system.

5 Q. Did he then print it out?

6 A. Yes.

7 Q. Did you see him print it out?

8 A. Yes.

9 Q. Do you know what the information that appears  
10 on the second page of Exhibit 133 indicates?

11 A. It indicates that this model the information  
12 -- let me start. It represents what we received from --  
13 of this model number.

14 Q. And what model number are you referring to?

15 A. 2528.

16 Q. And is that a model number of sunglasses that  
17 were sold by Jay-Y?

18 A. Yes.

19 Q. Is there a sample of that model number in any  
20 of the glasses that are photographs of which are marked as  
21 Exhibits 100 through 130?

22 A. Yes.

23 Q. Does this tell you anything else about the  
24 shipment of model number 252A?

25 A. There's a quantity, the receipt date, and the

1 duty, and the miscellaneous cost, the FOB cost, and the  
2 landed cost and the total. This and this one is a little  
3 bit different. Perhaps because of the change over it may  
4 be much more specific. Before we separate the duty and  
5 the miscellaneous cost, and here it's combined.

6 Q. The last part of your answer you're comparing  
7 the Exhibit 131 to Exhibit 133; is that right?

8 A. Yes.

9 Q. And were you pointing out that the column  
10 headings are a little bit different for the two different  
11 exhibits?

12 A. Well, actually, what was there is all in the  
13 computer system is all inputted there. How it was  
14 printed, that was done by the person who printed it out.

15 Q. So do you know whether it's possible to print  
16 a Purchase History Report that lists all of the purchases  
17 on a particular date?

18 A. Yes.

19 Q. And is it possible to print out a purchase  
20 history report for all of the purchases on a specific  
21 purchase order number?

22 A. I believe that you would be able to, just that  
23 I don't know how to do it, so I had to ask the computer  
24 consultant to do it.

25 Q. And what you asked the computer consultant to

1 do was print out a report by item number purchased as  
2 opposed to by date or by purchase order or by some other  
3 criterion.

4 A. Well, perhaps it might have been easier if I  
5 just gave him the item numbers. But because I asked him  
6 to separate them by year, so it was probably more  
7 complicated.

8 Q. Did you ask the computer consultant to print  
9 out Purchase History Reports by item number for each year  
10 from 1993 to 2000?

11 A. I don't know how he called it up, but I just  
12 told him I wanted to know each year which item numbers  
13 were purchased.

14 Oh. Correction. Each year which -- oh, no  
15 correction.

16 Q. But did you confine the search to the item  
17 numbers for the specific glasses that we're looking at  
18 today?

19 A. Yes.

20 Q. Did the computer consultant provide you with a  
21 copy of the second page of Exhibit 133?

22 A. Yes. This is what was given to me.

23 Q. And you created the cover page that is the  
24 first page of Exhibit 133; is that right?

25 A. Yes.

1 Q. After you received the Purchase History Report  
2 for 1993, did you search for the documents with regard to  
3 purchase No. 1008?

4 A. Yes.

5 Q. Were you able to find those?

6 A. Because 1993 was too long ago, we did not keep  
7 it for such a long time. I believe that between 93, 94  
8 and 95, I don't think we kept those.

9 (Exhibit 134 marked for identification.)

10 Q. I would like to show you what we will mark as  
11 Exhibit 134. Have you seen this document before?

12 A. Yes.

13 Q. What is it?

14 A. This is the sales history record that was  
15 printed out by my computer consultant.

16 Q. And with regard to the sales history, what  
17 kind of sales does this refer to?

18 A. Are you asking about the model number?

19 Q. No, just the term "sales." Does it refer to  
20 sales by Jay-Y to others, by third parties to Jay-Y, or  
21 something else?

22 A. It's what Jay-Y sold to their customers.

23 Q. And what did you ask the computer consultant  
24 to find in the SBT computer system?

25 A. Well, I gave him the --

1 THE INTERPRETER: The interpreter needs to  
2 verify the gender of the consultant.

3 MR. WILTON: He's male. I will ask that  
4 question, but I know he's male.

5 A. I gave him the model number, and I asked him  
6 to search what was received and what was sold, search  
7 those records.

8 Q. Is the computer consultant male or female?

9 A. Male.

10 Q. Did the computer consultant print out what is  
11 page 2 of Exhibit 134?

12 A. Yes.

13 Q. And after the computer consultant printed out  
14 page 13, the second page of Exhibit 134, did you do  
15 anything to try to find any documents?

16 A. Well, we went accordance to the invoice that  
17 was shipped out to the customers, according to those  
18 invoice numbers.

19 Q. What did you do with regard to those -- strike  
20 that.

21 When you're referring to invoice numbers, are  
22 you referring to the numbers that appear in the column  
23 that says invoice hash mark?

24 A. Yes.

25 Q. And what did you do with regard to the invoice



1 numbers that appear on the second page of Exhibit 134?

2 A. Well, if we're to go to try to copy the  
3 invoices, it would be a huge task. So we just went in to  
4 the computer and had them generate the invoice numbers.

5 Q. Why would it have been a huge task to copy the  
6 actual invoices?

7 A. Well, first of all, the older invoices were no  
8 longer kept. And also those that we had kept like we have  
9 the sales order as well as the invoice, and those are all  
10 packed away. So that in order to find them, we would have  
11 to open all the packages, open all the boxes, and to pick  
12 out each invoice to make a copy of that. So it would just  
13 be easier just to search for the invoice number from the  
14 computer and just print that out.

15 Q. Who searched for the invoice number in the  
16 computer?

17 A. This number was searched by the computer  
18 consultant.

19 Q. And the original invoices you described that  
20 are packed away, were those printed, originally printed  
21 from the computer?

22 A. Yes.

23 Q. And did the computer consultant print out  
24 invoices that corresponded to the four invoice numbers  
25 that appear on page 2 of Exhibit 134?

1 THE INTERPRETER: Counsel, I believe the  
2 interpreter misinterpreted the previous question. May she  
3 reinterpret that?

4 MR. WILTON: Yes, she may.

5 A. Yes.

6 MR. LERNER: I'm lost. Yes what?

7 MR. WILTON: Can you just read back my  
8 question that she reinterpreted and got the same answer?

9 THE INTERPRETER: This question. This one  
10 (pointing).

11 THE REPORTER: (Reading:) Question: And did  
12 the computer consultant print out invoices that  
13 corresponded to the four invoice numbers that  
14 appear on page 2 of Exhibit 134?

15 Answer: Yes.

16 THE INTERPRETER: And the response was yes.

17 MR. WILTON: Which was the original response.  
18 So okay.

19 THE INTERPRETER: I'm sorry.

20 MR. WILTON: Can we go back to the last  
21 question? Because now I'm lost as to what happened here.

22 THE REPORTER: (Reading:) Question: And did  
23 the computer consultant print out invoices that  
24 corresponded to the four invoice numbers that  
25 appear on page 2 of Exhibit 134?

1 Answer: Yes.

2 THE WITNESS: Yes.

3 (Exhibit 135 marked for identification.)

4 Q. I would like to mark that as Exhibit 135.  
5 Showing you Exhibit 135. Is this a copy of what the  
6 computer consultant printed out with regard to the four  
7 invoice numbers that appear on page 2 of Exhibit 134?

8 A. Yes.

9 Q. And what do these four pages reflect?

10 A. This is the invoice that was generated when it  
11 was shipped to the customers.

12 Q. And if we look at the first page, it has a  
13 date of December 16, 1993. Do you see that?

14 A. Yes.

15 Q. Was this invoice originally -- strike that.  
16 Was the information for this invoice  
17 originally input into the SBT computer system on December  
18 16, 1993?

19 A. This one here?

20 Q. Yes.

21 A. Yes.

22 Q. And on the second page was the information  
23 that appears on the second page of Exhibit 135. Was that  
24 information input into the SBT computer system on December  
25 20th, 1993?

1 A. Yes.

2 Q. And with regard to the third page of Exhibit  
3 135, was that information input into the SBT computer  
4 system on December 20th, 1993?

5 A. Yes.

6 Q. And finally with regard to page 4 of Exhibit  
7 135, was that information input into the SBT computer  
8 system on December 30, 1993?

9 A. Yes.

10 Q. I would like you to look back at Exhibit 134,  
11 which is the Purchase History Report -- or sales history  
12 report. Do you see under Invoice Date for the last  
13 invoice it says December 29, 1993?

14 A. Yes.

15 Q. Do you know why the date on the print out is  
16 different from the date on the Sales History Report?

17 A. I don't know why. (Document review.) I don't  
18 know.

19 Q. Okay. Either do I.

20 A. That's very strange.

21 Q. Do you know whether it would be possible to  
22 print out from the SBT computer system a report listing  
23 all of the sales to Blue Gem Sunglasses?

24 A. I don't know. I would have to ask the  
25 computer.

1 Q. Consultant?

2 A. Right.

3 MR. LERNER: Hal?

4 A. I believe it's possible. I just need to tell  
5 them -- tell them that each invoice and have that be  
6 generated. But I believe that is possible.

7 Q. With regard to the last item on the Sales  
8 History Report that we've marked as Exhibit 134, what  
9 quantity of sales does that line item represent?

10 A. One dozen.

11 Q. And if we look back at the fourth page of  
12 Exhibit 135 --

13 A. This is the fourth one.

14 Q. The last page.

15 A. Uh-huh.

16 Q. Do you see any line item for the same item No.  
17 252A?

18 A. Yes. Right here.

19 Q. And what's the quantity that's indicated on  
20 that page?

21 A. One dozen.

22 Q. Are you familiar with the style that has model  
23 No. 252A?

24 A. Yes, which I believe is this one.

25 Q. And this one -- well, I'm not going to try to

1 find the photograph.

2 Does model 252A include a DG logo on its  
3 temple?

4 A. Yes.

5 Q. So do these documents, Exhibits 134 and 135,  
6 tell you whether or not Jay-Y was selling sunglasses that  
7 included a DG logo in 1993?

8 A. Yes. You can verify that by looking at the  
9 sample.

10 THE WITNESS: May I go to the ladies room?

11 MR. WILTON: Yes, you may.

12 (Recess.)

13 (Exhibit 136 marked for identification.)

14 Q. BY MR. WILTON: Showing you Exhibit 136. Have  
15 you seen this document before?

16 A. Yes.

17 Q. What is it?

18 A. It's a purchase history.

19 Q. For what year?

20 A. 1994.

21 Q. And who generated page 2 of Exhibit 136?

22 A. The computer consultant.

23 Q. And do you know how the computer consultant  
24 generated page 2 of Exhibit 136?

25 A. He searched for the information from the

1 computer records, and then he printed them out.

2 Q. And in searching for the information, do you  
3 know whether he searched for all of the item numbers for  
4 the 31 pairs of sunglasses or did he just search for 252A?

5 A. I asked him to search for all of them.

6 Q. Did he then give you this printout of page 2  
7 of Exhibit 136?

8 A. Yes.

9 Q. When did this occur?

10 A. Like I had answered earlier, I don't really  
11 remember, but it was sometime after the beginning of 2009.

12 Q. And after you received the Purchase History  
13 Report that is page 2 of Exhibit 136, did you ever look  
14 for the purchase orders that are referenced on that  
15 Purchase History Report?

16 A. Yes, but because it was such a long time ago,  
17 we were really hoping that we had it. But perhaps because  
18 it was such a long time ago we didn't think we needed to  
19 keep it for such a long time.

20 Q. My question was: Did you search for it?

21 A. I answered yes.

22 Q. Okay. And were you unable to find any --  
23 either of the purchase orders referenced on the Purchase  
24 History Report?

25 A. Well, the purchase order records for that

1 entire year I was not able to locate.

2 (Exhibit 137 marked for identification.)

3 Q. I would like to show you what we will mark as  
4 Exhibit 137. Have you seen this document before?

5 A. Yes.

6 Q. And what is it?

7 A. It's a sales history.

8 Q. For what year?

9 A. 1994.

10 Q. And was this document created by or printed  
11 out by the computer consultant using the SBT computer  
12 system?

13 A. Yes.

14 Q. And what does this sales history report  
15 indicate?

16 A. It indicates that this model number was sold  
17 to different customers at different times.

18 Q. And did you ask the computer consultant to  
19 print out the invoices that are referenced on the sales  
20 history report?

21 A. Yes. It's all there.

22 (Exhibit 138 marked for identification.)

23 Q. I would like to mark this as Exhibit 138. Are  
24 these copies of the invoices that you asked the computer  
25 consultant to print out from the SBT computer system based



1 on the sales history report that we've marked as Exhibit  
2 137?

3 A. Yes.

4 Q. Were the invoices that, copies of which we've  
5 marked as Exhibit 138, was the information on those  
6 invoices input into the SBT computer system in the same  
7 manner that you have described previously with regard to  
8 sales by Jay-Y?

9 A. Yes.

10 Q. I would like you to look at the page marked at  
11 the bottom that says JAY-Y00330. It's part of Exhibit  
12 138. If you look at that, you will notice that on the --  
13 actually, it starts a couple of pages earlier. Instead of  
14 a customer name, it says "invalid customer number." Do  
15 you see that?

16 A. Yes.

17 Q. Do you know why it says that?

18 A. Well, perhaps originally when it was sold in  
19 1994 this company existed on the originals, but perhaps in  
20 1996 maybe the company went out of business or it was  
21 bankrupt or it no longer existed. So in order not to keep  
22 sending them catalogs, then we would input into the  
23 computer saying that it is an invalid customer. So  
24 because it's already in the main computers when we  
25 searched it, that's what came out.

1 Q. You mentioned 1996 in your answer?

2 A. Well, you know, could be any of them. Could  
3 be '96, '97 or '98. Whenever that happened. And then so  
4 when that was inputted in, that's what came out.

5 Q. Do you remember a customer -- well, strike  
6 that.

7 If you look at the top right corner of this  
8 document under the invoice number we're looking at 330,  
9 still 330. Or 328, 329.

10 A. 329 and 330 are the same invoice. It's the  
11 first page.

12 Q. If you look at the --

13 A. First and second page.

14 Q. Right. And actually 328 is the -- 328 is the  
15 first page, and then it goes for three pages.

16 A. Right.

17 Q. On the top right-hand corner there is what  
18 looks like should be "invoice," the word "invoice." Do  
19 you see that?

20 A. Yes.

21 Q. And then there's --

22 A. But why is it printed out looking like this?  
23 Maybe when it was being copied it was copied this way?

24 Q. Okay. That's not my question.

25 Underneath where we have the number 942625,

1 there's a notation that says Customer DVIM. Do you see  
2 that?

3 A. Yes.

4 Q. Do you recognize that abbreviation?

5 A. That's the abbreviation for the customer.

6 Q. Do you remember the name of that customer?

7 A. I don't remember.

8 Q. Do each of the invoices included in Exhibit  
9 138 reflect a sale of model No. 252A sunglass?

10 A. Yes.

11 Q. And 252A was a model that included the DG  
12 logo; is that correct?

13 A. Yes.

14 Q. Okay. We'll move on.

15 (Exhibit 139 marked for identification.)

16 I would like to show you Exhibit 139. Do you  
17 know what this document is?

18 A. Yes. It's a purchase history.

19 Q. And was this document printed out from the SBT  
20 computer system by the computer consultant?

21 A. Yes.

22 Q. And when the computer consultant printed out  
23 all the documents we were talking about in terms of  
24 purchase and sales history, where was he working?

25 A. He was working at our company, the computer at

1 our company.

2 Q. And did you see him print out the second page  
3 of Exhibit 139?

4 A. Yes.

5 Q. And what is reflected on the second page of  
6 Exhibit 139?

7 A. This is -- it indicates the records of  
8 sunglasses that has the DG logo, those purchase history.

9 Q. And how do you know that these -- first of  
10 all, strike that.

11 When you talk about sunglasses with the DG  
12 logo, are you referring to the model numbers that appear  
13 in the column that say Item No.?

14 A. Yes.

15 Q. After the computer consultant printed out the  
16 second page of Exhibit 139, did you search for the  
17 purchase orders that are referenced on that printout?

18 A. Yes.

19 Q. Were you able to locate them?

20 A. It was too long ago. There was no way to find  
21 them.

22 (Exhibit 140 marked for identification.)

23 Q. Showing you Exhibit 140. Have you seen  
24 Exhibit 140 before?

25 A. Yes.

1 Q. And what is it?

2 A. It's a sales history.

3 Q. And was this sales history printed out by the  
4 computer consultant?

5 A. Yes.

6 Q. And was the computer consultant using the SBT  
7 computer system to print out this sales history report?

8 A. Yes.

9 Q. And what does this sales history report  
10 reflect?

11 A. It indicated or indicates what we sold to  
12 different customers at different times.

13 Q. And it indicates what was sold to different  
14 customers with regard to specific model numbers; is that  
15 right?

16 A. Yes.

17 (Exhibit 141 marked for identification.)

18 Q. I would like to show you what we'll mark as  
19 Exhibit 141. Have you seen Exhibit 141 before?

20 A. Yes.

21 Q. And what is --

22 A. These are the invoices that are given to the  
23 customers.

24 Q. And were these the invoices that are part of  
25 Exhibit 141? Were they printed out from Jay-Y's SBT

1 computer system?

2 A. Yes.

3 Q. And do these invoices reflect sales of the  
4 specific models listed in the sales history report to the  
5 customers listed on each of the invoices?

6 A. Yes.

7 (Exhibit 142 marked for identification.)

8 Q. Have you seen Exhibit 142 before?

9 A. Yes.

10 Q. And what is it?

11 A. It's a sales history for 1996.

12 Q. And how was this document created?

13 A. It was printed from the computer.

14 Q. And did the computer consultant print it?

15 A. Yes.

16 Q. And was he using Jay-Y's SBT computer system  
17 to do that?

18 A. Yes.

19 Q. The first page of Exhibit 142, did you create  
20 the first page?

21 A. Yes.

22 Q. And what does the parentheses that says 1?  
23 What does that indicate?

24 A. I don't remember now. Maybe it was because  
25 there were more, there were more papers.

1 Q. Did you write the notation 3-1 that's on the  
2 first page of Exhibit 142?

3 A. It looks like it, but I don't remember.

4 (Exhibit 143 marked for identification.)

5 Q. Have you seen Exhibit 143 before?

6 A. Yes.

7 Q. And what is Exhibit 143?

8 A. It's also a sales record. I remember now  
9 because there was a lot of sales records, so it was very  
10 thick. So I had to separate them into three stacks. So  
11 then I separated these into threes, and on top of them I  
12 put each one on top of each stack.

13 Q. When you refer to sales records, are you  
14 referring to invoices?

15 A. Invoices. Yes.

16 Q. And are these the invoices or were the  
17 invoices you're referring to printed out from the SBT  
18 computer system?

19 A. Yes. I remember now that the 3-1 refers to  
20 having three stacks, and this is the first stack of three.

21 (Exhibit 144 marked for identification.)

22 Q. I would like to show you Exhibit 144. Do you  
23 see Exhibit 144?

24 A. Yes.

25 Q. And does Exhibit 144 consist of printouts from

1 the SBT computer system of the invoices listed in Exhibit  
2 142?

3 A. Yes. This goes with this.

4 Q. Just to make our record a little clearer than  
5 that, by "this," you mean Exhibit 144 goes with "this," by  
6 which you mean Exhibit 142?

7 A. 142, that's a sales report. And 144 is the  
8 supporting invoices.

9 (Exhibit 145 marked for identification.)

10 Q. Let me mark this as Exhibit 145. Have you  
11 seen this document before?

12 A. Yes.

13 Q. And what is it?

14 A. It is a 1996 sales history.

15 Q. And if we put exhibits 142, 143, and 145  
16 together, do those reflect the entire sales history report  
17 for the year 1996 that was printed out from the SBT  
18 computer system by the computer consultant?

19 A. Yes.

20 Q. And you, after these were provided to you by  
21 the computer consultant, did you split them into three  
22 parts?

23 A. What he had given me was one stack, but  
24 because I was afraid it was going to be too big of a stack

25 --



1 Q. You divided it into three?

2 A. Yes. Yes.

3 (Exhibit 146 marked for identification.)

4 Q. Let's mark this as Exhibit 146. Is Exhibit  
5 146 a printout of invoices from the SBT computer system?

6 A. Yes.

7 Q. And do those invoices correspond to the  
8 invoices listed on the sales history report which we've  
9 marked as Exhibit 143?

10 A. Yes.

11 (Exhibit 147 marked for identification.)

12 Q. Finally, I would like to mark this as Exhibit  
13 147. Now, is Exhibit 147 a printout of invoices from the  
14 SBT computer system?

15 A. Yes.

16 Q. And do those invoices correspond with the  
17 invoices listed in the sales report that we have as  
18 Exhibit 145?

19 A. Yes.

20 (Exhibit 148 marked for identification.)

21 Q. 148. 97 purchase records.

22 (A discussion was held off the record.)

23 Q. 148. Have you seen Exhibit 148 before?

24 A. Yes.

25 Q. And what is 148?

1 A. It's the purchase history for 1997.

2 Q. And who created Exhibit 148?

3 A. It was printed out from the computer by the  
4 computer consultant.

5 Q. And the computer you're referring to is the  
6 SBT system used by Jay-Y?

7 A. Yes.

8 Q. And did the computer consultant give you a  
9 copy of the printout that we've marked as Exhibit 148?

10 A. Yes.

11 Q. And after the computer consultant gave you a  
12 copy of the exhibit we've marked as Exhibit 148, did you  
13 try to find any of the documents that are referenced in  
14 Exhibit 148?

15 A. Yes.

16 (Exhibit 149 marked for identification.)

17 Q. Now showing you Exhibit 149. Do you recognize  
18 Exhibit 149?

19 A. Yes.

20 Q. And what is Exhibit 149?

21 A. It's the records that were sent out from the  
22 factory, which also means it's our documents that when we  
23 received the goods.

24 Q. Do the documents in Exhibit 149 correspond to  
25 the listed purchase orders in Exhibit 148?

1 A. Yes.

2 Q. And were the documents in Exhibit 149 kept in  
3 the files of Jay-Y?

4 A. Yes.

5 (Exhibit 150 marked for identification.)

6 Q. I'd like to mark as Exhibit 150. Have you  
7 seen Exhibit 150 before?

8 A. Yes.

9 Q. What is it?

10 A. 1997 sales history.

11 Q. And how was the sales history report that's  
12 marked as Exhibit 150 created?

13 A. It was also our computer consultant who  
14 printed that from our computers.

15 Q. And when the computer consultant printed the  
16 sales history report for 1997, was it longer than what  
17 we've marked as Exhibit 150?

18 A. Yes. From looking at the top page I think  
19 there are four, four sets.

20 Q. Did you divide them into four sets?

21 A. Yes.

22 Q. And why did you do that?

23 A. Well, because I felt that it would be easier  
24 to search through them because it was too big of a stack.  
25 It may fall over.

1 Q. That's pretty accurate.

2 (Exhibit 151 marked for identification.)

3 Q. 151. I would like to show you Exhibit 151.

4 A. This. And these are the same. These are the  
5 invoices that supports this.

6 Q. I was going to ask. Now I will actually ask  
7 the question. What is Exhibit 151?

8 A. These are the invoices to the customers.

9 Q. And were those invoices printed out from the  
10 SBT computer system?

11 A. Yes.

12 Q. And do those invoices correspond with the  
13 invoices listed in Exhibit 150?

14 A. Yes.

15 Q. Do those invoices reflect sales by Jay-Y of  
16 sunglasses that include a DG logo?

17 A. Yes.

18 Q. And can you tell me what the number is on the  
19 last page of Exhibit 151?

20 A. JAY-Y01682.

21 (Exhibit 152 marked for identification.)

22 Q. I would like to mark that as Exhibit 152.  
23 Have you seen this document before?

24 A. Yes.

25 Q. And what is it?

1 A. 1997 sales records history.

2 Q. Is Exhibit 152 part of the complete sales  
3 history report that was printed out by the computer  
4 consultant from the SBT computer system for 1997?

5 A. Yes.

6 (Exhibit 153 marked for identification.)

7 Q. 153. Exhibit 153 do you recognize?

8 MR. LERNER: Blanket questions for the rest  
9 are fine.

10 MR. WILTON: Let's finish that, then we'll  
11 figure this out.

12 Q. Do you recognize Exhibit 153?

13 A. Yes.

14 Q. And what is Exhibit 153?

15 A. It's records that was sent to the customers,  
16 the invoices.

17 Q. Are they printouts of invoices from the SBT  
18 computer system?

19 A. Yes.

20 Q. And were the original invoices sent to  
21 customers with regard to their purchase of sunglasses from  
22 Jay-Y?

23 A. Yes.

24 Q. And do those invoices reflect sales by Jay-Y  
25 of sunglasses that included a DG logo?

1 A. Yes.

2 MR. WILTON: Why don't we go off the record  
3 for a second.

4 (A discussion was held off the record.)

5 (Recess.)

6 (Exhibit 154 marked for identification.)

7 (Exhibit 156 marked for identification.)

8 MR. WILTON: I would like to show you what  
9 we've marked as Exhibits 154 and 156. Have you seen those  
10 documents before?

11 A. Yes. These are the '97 sales records.

12 Q. Are they the last portion of the 1997 sales  
13 history report that was printed out by the computer  
14 consultant from the SBT computer system?

15 A. Yes.

16 (Exhibit 155 marked for identification.)

17 (Exhibit 157 marked for identification.)

18 Q. And I would like to show you what we've marked  
19 as Exhibits 155 and 157.

20 A. Yes.

21 Q. And is Exhibit 155 a printout from the SBT  
22 computer system of the invoices listed on Exhibit 154?

23 A. Yes.

24 Q. And is Exhibit 157 a printout of the invoices  
25 listed on Exhibit 156?

1 A. Yes.

2 Q. And do each of those invoices in Exhibits 155  
3 and 157 reflect sales by Jay-Y to customers of sunglasses  
4 that include a DG logo?

5 A. Yes.

6 (Exhibit 158 marked for identification.)

7 Q. I would like to show you what we've marked as  
8 Exhibit 158.

9 A. Yes.

10 Q. Have you seen that before?

11 A. Yes.

12 Q. And what is it?

13 A. It's a 1998 purchasing history.

14 Q. And was that purchase history printed out from  
15 the SBT computer system by the computer consultant?

16 A. Yes.

17 (Exhibit 159 marked for identification.)

18 Q. And I would like to show you Exhibit 159.

19 A. Yes.

20 Q. Does 159 consist of copies of the invoices and  
21 other shipping documents that correspond with the purchase  
22 orders listed in Exhibit 158?

23 A. Yes.

24 Q. And were the originals of the documents in  
25 Exhibit 159 kept in the files of Jay-Y?

1 A. Yes.

2 (Exhibits 160, 162, 164, 166, 168, 170,  
3 and 172 marked for identification.)

4 Q. Let me show you what we've marked as Exhibits  
5 160, 162, 164, 166, 168, 170, and 172.

6 A. I'm sorry. This one here there's a mistake.  
7 I think this one is for '99.

8 Q. Well, thank you for pointing that out.

9 A. This is not '98.

10 Q. "This" being Exhibit 159, you said, are copies  
11 of purchase documents for 1999?

12 A. Yes. From the looks of it, it looks like it's  
13 for 1999.

14 Q. Do you know whether you were able to locate  
15 the purchase -- the underlying purchase orders, invoices,  
16 and other documents for 1998?

17 A. I don't remember. Did I produce them?

18 Q. As I sit here, I do not know. I will check.

19 A. Well, I know that there was one year where the  
20 records were gone, but I don't know which year, but in the  
21 year that the records were gone I did write down which  
22 year that was.

23 Do you remember?

24 MR. CHEN: No.

25 Q. That's okay. We'll get there.



1 Do you know if you looked for the purchase  
2 record -- the invoices and shipping records with regard to  
3 1998?

4 A. Yes.

5 Q. And if you provided -- if you found them, you  
6 provided them to us to produce to Mr. Lerner; is that  
7 right?

8 A. Right. If I had them, I had already produced  
9 them.

10 Q. Let's move on to the next. I'm showing you  
11 now I'm showing you Exhibits 160, 162, 164, 166, 168, 170,  
12 and 172.

13 A. All right.

14 Q. Do you recognize these exhibits?

15 A. These are the 1998 sales history.

16 Q. And were these exhibits printed out from the  
17 SBT computer system by the computer consultant?

18 A. Yes.

19 Q. And when they were printed out by the computer  
20 consultant, were they just in one big stack or were they  
21 divided into seven stacks?

22 A. He gave me a big stack. I divided them into  
23 seven stacks.

24 Q. And why did you divide them into seven stacks?

25 A. I was afraid that if they toppled over and get

1 all mixed up it would be very difficult to try to match  
2 them up again with the sales history report.

3 (Exhibit 161 marked for identification.)

4 Q. Let me show you what we've marked as Exhibit  
5 161. I will ask you, have you seen those documents  
6 before?

7 A. Yes.

8 Q. And what are they?

9 A. Customer invoices.

10 Q. Are they customer invoices that were printed  
11 out from the SBT computer system?

12 A. Yes.

13 Q. And do those invoices correspond to the  
14 invoices listed in the sales history report that we've  
15 marked as Exhibit 160?

16 A. Yes.

17 (Exhibit 163 marked for identification.)

18 Q. I would like to show you Exhibit 163. Do you  
19 recognize those documents?

20 A. Yes.

21 Q. And what are they?

22 A. Customer invoices.

23 Q. Are they invoices that were printed out from  
24 the SBT computer system by the computer consultant?

25 A. Yes.

1 Q. And do those invoices correspond to the  
2 invoices listed on Exhibit 162?

3 A. Yes.

4 (Exhibit 165 marked for identification.)

5 Q. I would like to show you Exhibit 165. What is  
6 Exhibit 165?

7 A. Customer invoices.

8 Q. Are they invoices that were printed out from  
9 the SBT computer system by the computer consultant?

10 A. Yes.

11 Q. And do those invoices correspond to the  
12 invoices listed in the sales history report of Exhibit  
13 164?

14 A. Yes.

15 (Exhibit 167 marked for identification.)

16 Q. I would like to show you Exhibit 167. Do you  
17 recognize Exhibit 167?

18 A. Yes.

19 Q. And what is Exhibit 167?

20 A. Customer invoices.

21 Q. Are they invoices that were printed out from  
22 the SBT computer system?

23 A. Yes.

24 Q. Do they correspond with the invoices listed in  
25 Exhibit 166?

1 A. Yes.

2 (Exhibit 169 marked for identification.)

3 Q. I would like to show you Exhibit 169. Does  
4 Exhibit 169 consist of invoices that were printed out from  
5 the SBT computer system by your computer consultant?

6 A. Yes.

7 Q. And do the invoices in Exhibit 169 correspond  
8 with the invoice numbers listed in Exhibit 168?

9 A. Yes.

10 (Exhibit 171 marked for identification.)

11 Q. I would like to show you Exhibit 171. Does  
12 Exhibit 171 consist of invoices that were printed by the  
13 computer consultant from the SBT computer system?

14 A. Yes.

15 Q. And do the invoices in Exhibit 171 correspond  
16 with the invoice numbers listed in Exhibit 170?

17 A. Yes.

18 (Exhibit 173 marked for identification.)

19 Q. I would like to show you Exhibit 173. Does  
20 Exhibit 173 consist of invoices that were printed by the  
21 computer consultant from the SBT computer system?

22 A. Yes.

23 Q. And do the invoices in Exhibit 173 correspond  
24 with the invoice numbers listed in Exhibit 172?

25 A. 172. Yes.

1 Q. And with regard to the invoices that are  
2 listed in exhibits 173, 171, 169, 167, 165, 163, and 161,  
3 are those copies of invoices the originals of which were  
4 sent to customers?

5 A. Yes.

6 Q. And do all of those invoice reflect sales by  
7 Jay-Y to customers of sunglasses that include a DG logo?

8 A. Yes.

9 Q. I believe you mentioned that Jay-Y creates  
10 catalogs?

11 A. Yes.

12 Q. When did Jay-Y start creating catalogs for its  
13 sunglasses?

14 A. 1980 something, but I don't remember which  
15 year.

16 Q. And does Jay-Y keep copies of all of its  
17 catalogs?

18 A. No. The ones that were too old we didn't  
19 keep.

20 (Exhibit 174 marked for identification.)

21 Q. I would like to show you what we've marked as  
22 Exhibit 174. Did you recognize Exhibit 174?

23 A. Yes.

24 Q. And what is it?

25 A. It's a 1995 catalog.

1 Q. When was the 1995 catalog created?

2 A. Generally we start doing it in either  
3 September or October of 1994.

4 Q. When you say generally, do you mean each time  
5 you create a catalog you start in about September, October  
6 of the year before?

7 A. Yes.

8 Q. And what's the first step that you take in  
9 creating a catalog?

10 A. Well, we have to collect all of the samples  
11 for the glasses in the catalog.

12 Q. And where do you collect those? At Jay-Y, in  
13 China, or someplace else?

14 A. All of them.

15 Q. Where do you collect them to?

16 A. Well, in the earlier years the pictures were  
17 taken in Taiwan in the catalogs -- the photographs for the  
18 sunglasses were taken in Taiwan. So in those years they  
19 were collected and taken to Taiwan.

20 Q. And when you talk about the earlier years,  
21 when did that practice change?

22 A. I can't be sure when, but it was in the 1980s  
23 until before 1995. The catalog was created in Taiwan, but  
24 I can't be sure exactly which year.

25 Q. In 1994, after the samples were collected,

1 what happened next with regard to the creation of the  
2 catalog?

3 A. Well, then the catalog company would take a  
4 picture of each one, and then they would make a board, and  
5 then they would print it.

6 Q. And when was the 1995 catalog printed?

7 A. Well, generally the preparation would begin in  
8 September or October, and then in November it would be  
9 printed.

10 Q. In 1996 did Jay-Y create a catalog?

11 A. Yes.

12 Q. I would like to show you Exhibit 175 and ask  
13 you if you recognize that.

14 A. Yes. That is a 1996 catalog.

15 Q. If you look at the second page of the catalog  
16 just opened up, do you see the little numbers that appear  
17 on that page?

18 A. Yes.

19 Q. What are those numbers?

20 A. It's the model numbers for these styles.

21 Q. And these are the same model numbers that  
22 appear on Jay-Y's invoices; is that right?

23 A. Yes.

24 Q. And do the same model numbers appear on the  
25 purchase orders and invoices Jay-Y receives from the

1 factory?

2 A. Yes, but I can't say that it is 100% the same.  
3 I can say it's about 98% the same because sometimes let's  
4 say it's an R, maybe that letter R was not indicated on  
5 the catalog.

6 Q. So if there was a specific lens, like a  
7 regular lens or a mirrored lens, would the invoice  
8 received from the factory reflect the fact that there is a  
9 specific lens?

10 A. Yes. Well, because the space in the catalogs  
11 are limited. So sometimes if I'm going to have enough  
12 room, we don't. But we would do our best to, let's say,  
13 if there are two different types of lenses, then we would  
14 put them both in the catalog. But if we didn't have  
15 enough space, then instead of repeating we just put one.

16 Q. When was the 1996 catalog created?

17 A. It's the same every year. We will start the  
18 preparations in around September or October, and then it  
19 would be printed around November.

20 (Exhibit 176 marked for identification.)

21 Q. I would like to show you what we've marked as  
22 Exhibit 176. Do you recognize that?

23 A. Yes.

24 Q. Is it a copy of Jay-Y's 1997 catalog?

25 A. Yes.



1 Q. Was that catalog created in the same fashion  
2 as the previous catalogs that we've discussed?

3 A. Yes.

4 Q. Was that catalog sent to the printers around  
5 November of 1996?

6 A. I think it's a little bit different, which I  
7 interpreted.

8 (Re-interpreted.)

9 Yes.

10 (Exhibit 177 marked for identification.)

11 Q. I would like to show you Exhibit 177. Is 177  
12 a copy of Jay-Y's 1998 catalog?

13 A. Yes.

14 Q. Was that catalog printed around November of  
15 1997?

16 A. Yes.

17 MR. WILTON: I have nothing further at this  
18 time.

19  
20 CROSS-EXAMINATION

21 BY MR. LERNER:

22 Q. I think you testified earlier that Jay-Y would  
23 attend trade shows to market and take orders for its  
24 sunglasses; is that right?

25 A. Yes.

1 Q. When you were referring to customers who  
2 attended those trade shows, what customers are you  
3 referring to?

4 A. Like I said before, any customers who come to  
5 our booth. They could be distributors. They could be  
6 wholesalers or wholesalers in the wholesale district.  
7 They may be retailers who have their own shops. Or they  
8 may be salespeople who would purchase from us and they  
9 would sell them at the gas stations. There are many  
10 different types of customers.

11 Q. But no retail end purchasers? No individual  
12 consumers?

13 MR. WILTON: Objection. Compound.

14 MR. LERNER: Let me -- before you finish  
15 translating, he objected, so I will just rephrase.

16 Q. BY MR. LERNER: But no individual customers  
17 purchasing for themselves to wear glasses?

18 A. No, because we're wholesalers, and we were not  
19 allowed to. And also that show also does not allow that.

20 Q. When you say "that show," are you referring to  
21 the trade shows in New York, Chicago, and Las Vegas?

22 A. Yes.

23 Q. Did all your customers submit orders via these  
24 trade shows?

25 A. Most of them. Yes.

1 Q. Were there some customers who placed orders  
2 directly with Jay-Y, not through the trade shows?

3 A. Well, some of them because we have a logo, and  
4 the customers found us by our logos. Then also earlier on  
5 some of them when my husband would drive to the swapmeets  
6 in the earlier years to get customers, and also sometimes  
7 we would go to the wholesale districts to see if there are  
8 any customers who were selling glasses. And we tried to  
9 market it that way, but for the most part it was through  
10 trade shows.

11 Q. If the customers mainly ordered through trade  
12 shows, why did Jay-Y generate catalogs?

13 A. Well, because when customers make orders, it's  
14 not just one time. Sometimes they would order once a week  
15 or sometimes they would order several times a month. So  
16 in order to make a communication easier, the catalogs  
17 helped with that.

18 Q. Looking at Exhibit 174, the 1995 catalog, does  
19 this catalog contain a complete selection of the models  
20 that were available for sale by Jay-Y in 1995?

21 A. No.

22 Q. How do you know that?

23 A. Because like I said earlier, when we printed  
24 this catalog, it was sometime in September, October of  
25 '94. And then when it was printed, it was in November.

1 So any of the new styles that came in December, then there  
2 wouldn't be enough time to put those on in the 1995  
3 catalog.

4 Q. Does the 1995 catalog, Exhibit 174, does that  
5 reflect all the models that were available for sale from  
6 Jay-Y as of the date of printing in November 1994?

7 A. Can you repeat?

8 (The record was read.)

9 A. I'm wondering if I'm misunderstanding. Maybe  
10 I'm misunderstanding the interpretation. What I'm  
11 understanding is that are you asking in the 1995 catalog  
12 was that sold -- were the models being sold in 1994. Was  
13 that your question?

14 Q. Well, I'm asking -- I understand that the  
15 catalog was printed, the 1995 catalog was printed in 1994;  
16 correct?

17 A. Yes.

18 Q. So I'm trying to understand. As of November  
19 1994 when the 1995 catalog was printed, did it represent  
20 the entire line of models available for sale as of  
21 November 1994?

22 A. I should say that's no. Can I explain?

23 Q. Well, let me ask you. How do you know that  
24 not all the models available for sale at the time that  
25 this was printed in November 1994 were reflected in the

1 catalog?

2 A. Well, because I said that the 1995 catalog was  
3 printed in November of 1994. So when we were gathering  
4 the samples for this catalog, there were many of the  
5 styles that were designed for the following year. So even  
6 though we have the styles, and we have made an order, but  
7 it had not -- so even though we had made the purchase, but  
8 then the factory had not shipped the goods yet, so it  
9 would not be in '94. And also what came out in December  
10 of '94 there wasn't enough time to put it in the 1995  
11 catalog. So what we had was usually more than what is  
12 indicated in the catalog.

13 Q. I'm not sure I'm following. You said you had  
14 more than what was indicated in the catalog.

15 A. Yes.

16 Q. So what more? What's missing from what was  
17 available in November 1994 that's not in the catalog?

18 A. In 1994 maybe what was left didn't sell well.  
19 Maybe there was just a little bit left. But if there was  
20 no products left of that, then we would not put it in the  
21 1995 catalog. And so those set were newly developed for  
22 1995, but it was too late to put it in the catalog, so  
23 those also were not in the catalog.

24 Q. Are there any sunglasses that included the DG  
25 logo on them depicted in the 1995 catalog?

1 A. Yes.

2 Q. Are you able to identify them?

3 A. It's in the history. Want me to search this  
4 one one by one? For example, in the first page the  
5 NK6405.

6 Q. So you're referring to the image that's the  
7 second image down in the first column on the right-hand  
8 side of the first interior page of the catalog that says  
9 NK6405?

10 A. Yes.

11 Q. Does the image in the catalog show the letters  
12 DG on the glasses?

13 A. Well, because when the picture of is taken on  
14 the front view, so you can't see it.

15 Q. So somebody just looking at the catalog at  
16 this picture wouldn't know that NK6405, wouldn't know just  
17 from the picture, that NK6405 has DG on it?

18 A. Well, actually we would have to show this to  
19 kind of explain it to them. But like I said earlier, in  
20 the earlier stages, because of the competition, the  
21 customer didn't really care whether or not they have it or  
22 not.

23 MR. LERNER: Can you repeat the question?

24 THE REPORTER: (Reading:) So somebody just  
25 looking at the catalog at this picture wouldn't

1 know that NK6405, wouldn't know just from the  
2 picture, that NK6405 has DG on it?

3 A. From the photograph one can't tell, but at the  
4 trade show you can see it. And when we sent the samples  
5 to the customers, that's when they can see it. And also  
6 when we call them on the phone, we can also tell the  
7 customers.

8 Q. Does every customer get a sample of every  
9 sunglass represented in each catalog?

10 A. Well, normally if they were big clients, we  
11 would have sent them free samples. But if they were  
12 smaller clients, and sometimes we would tell them these  
13 are good, they sell pretty well, do they want to try by  
14 maybe ordering a dozen? And generally they would order  
15 that to try it out.

16 Q. Okay. But does every customer get a sample of  
17 every sunglass represented in the catalog?

18 A. Of course not.

19 Q. So does every customer who ordered -- did  
20 every customer who ordered NK6405 get a sample of NK6405  
21 before they placed an order for that model?

22 A. Like I had explained earlier, maybe yes, maybe  
23 no.

24 Q. I may have asked already, but just to confirm.  
25 All the sunglasses that are shown in Exhibit 174, the 1995

1 catalog, are just showing the front of the glasses;  
2 correct?

3 MR. WILTON: Objection. The document speaks  
4 for itself.

5 A. Yes.

6 Q. And is it also correct, then, that none of the  
7 sunglasses shown in 1995 show the DG logo?

8 MR. WILTON: Objection. Vague and ambiguous.

9 A. Well, if from the catalog, then no. But most  
10 of the time the customers would see that from the trade  
11 shows or from the samples that we sent them or when we  
12 talk on the phone, they would be told.

13 Q. How would they be told? What would they be  
14 told?

15 A. We would tell them this is a new design, and  
16 that is a designer glasses, and it's got a DG logo, and  
17 it's a very good quality.

18 Q. So if somebody called to order NK6405, and  
19 they told you they wanted to order NK6405, a salesperson  
20 would tell them on the phone that it's a designer glass  
21 that had the DG logo?

22 MR. WILTON: Objection. Lack of foundation.

23 A. Yes. Because if we didn't tell them, and then  
24 they received the glasses, and then they see the DG logo,  
25 and they didn't want that on there, then they would return



1 the goods, and then that would be a cost that we would  
2 have to undertake.

3 Q. Did you have the experience of customers  
4 receiving glasses with DG on them that they returned  
5 because they did not want DG on the glasses?

6 A. Well, there's no way for me to really  
7 remember. I'm sure there was, but maybe not because of  
8 the reason. It could be because it's not a good seller,  
9 so they want to return it saying they didn't want that.

10 Q. Then what was your basis for testifying a  
11 moment ago that you wanted to tell somebody ordering, for  
12 example NK6405, that it had "DG" to avoid them returning  
13 it if they received it and found that it had a DG logo on  
14 it that they didn't want?

15 A. Well, like I said, the percentage. Let's say  
16 if we don't tell them, then, you know, we don't tell them  
17 that there's a logo, the DG's there, then when they get  
18 it, they didn't like it, then maybe, you know, the return  
19 is like 30 or 40 percent. But our return is only 2  
20 percent or maybe 1 percent. And the customers, whether or  
21 not there were any DG logos on it, if something didn't  
22 sell, well, they would still want to return it.

23 Q. So it's pure speculation on your part that a  
24 return rate might have been higher if customers received  
25 glasses with DG logo that they didn't know were going to

1 have the DG logo?

2 A. Yes.

3 Q. Also look at the 1996 catalog marked Exhibit  
4 175. Does this Exhibit 175 contain images of models that  
5 display a DG logo?

6 A. Yes. The third page, NK6405. And the sixth  
7 page, NK6341.

8 Maybe if we look at the records, it may be a  
9 little bit quicker.

10 Q. You don't need to find all of them. I just  
11 wanted to know if any of them are contained in this  
12 catalog.

13 A. Yes. I just found two of them.

14 Q. Okay. Do either of the models that you found  
15 do the images shown in the catalog actually show the DG  
16 logo?

17 A. No.

18 Q. Do you know is the DG logo shown anywhere in  
19 this catalog?

20 A. No, but you can see it from the samples.

21 Q. What about Exhibit 176, the 1997 catalog?  
22 Does this catalog contain models of glasses with the DG  
23 logo?

24 A. Yes. On page 7, NK6341, and page 5 -- oh,  
25 correction. Not page 7. Page 5, NK6341. And then page

1 7, NK6345. And NK6346.

2 Q. And do any of those images show DG?

3 A. I guess you can tell from the catalog because  
4 it's taken from the front, but you can tell from the  
5 samples.

6 Q. Is that true for all the models in the 1997  
7 catalog?

8 MR. WILTON: Is what true?

9 Q. That you can't see a DG depicted on the  
10 photos.

11 A. Yes.

12 Q. What about So somebody just looking at the  
13 catalog at this picture wouldn't know that NK6405,  
14 wouldn't know just from the picture, that NK6405 has DG on  
15 it?

16 (Recess.)

17 MR. LERNER: So back on the record.

18 Q. BY MR. LERNER: I had just handed you Exhibit  
19 177, the 1998 catalog, and wanted to ask you similar  
20 question as to whether this catalog includes models --  
21 model numbers of sunglasses sold by Jay-Y that have the DG  
22 logo.

23 A. It's the same response on the catalog, because  
24 the photographs are taken in the front view. So you  
25 couldn't see the temples. So you couldn't see it. But

1 again, from looking at the samples or looking at it at the  
2 trade show, you could tell the logo's on there.

3 Q. Do you have any way of knowing whether  
4 customers who ordered glasses with the models that have DG  
5 logos had actually seen samples of those glasses at the  
6 trade shows?

7 A. Like I said earlier, we would take all of our  
8 samples there, and we'd display all of our samples.

9 Q. Okay. But the question is: Do you have any  
10 way of knowing whether any particular customer who ordered  
11 one of the models that featured the DG logo had actually  
12 seen that a sample of those glasses at the trade show?

13 A. Well, it's been such a long time ago, the only  
14 thing I can do is to call the customers and ask them if  
15 they remember. But it's been so long, I'm not sure I  
16 could call them to see if they remember.

17 Q. So the answer is, you don't know?

18 A. I don't know.

19 Q. Did Jay-Y distribute price lists with the  
20 catalogs represented by Exhibits 174, 175, 176, and 177?

21 A. When the catalogs were sent out at that time,  
22 yes. But because it's already the time has already  
23 passed, so we didn't keep those. For example, I probably  
24 still have it for 2010, but for 2009 I probably didn't  
25 keep that.

1 Q. Why keep the catalogs but not the price lists?

2 A. I don't know why I would have to keep the  
3 price list. For what?

4 Q. Why did you have to keep the catalogs?

5 MR. WILTON: Objection. Lack of foundation.

6 Q. Did you believe you had to keep the catalogs?

7 A. Well, the samples and the catalog by keeping  
8 it you sort of keep a history for yourself.

9 Q. This morning I believe you had testified that  
10 in or about 1987 you were involved in purchasing, among  
11 other responsibilities for Jay-Y; is that correct?

12 A. Yes.

13 Q. And do you recall also that you said that you  
14 would go to factories, and you would look at the different  
15 styles and determine what you felt you would sell well?

16 A. Yes.

17 Q. And I think you said that you just had a  
18 feeling regarding what would sell well?

19 A. Yes.

20 Q. Can you tell me what you based that feeling  
21 on?

22 A. Well, like I said, I have been helping with  
23 the purchasing since 1983, so this feeling came from just  
24 knowing what sells well. For example, if there are those  
25 that are just too strange looking, then it would be more

1 risky because our profit margin is quite small. So if we  
2 get the strange ones that don't sell well, then it would  
3 be a loss for us. So I tried not to purchase the strange  
4 looking ones.

5 Q. Okay. I think you also testified this morning  
6 in the early 90s that customers were primarily -- that  
7 price was important to customers; is that right?

8 A. Yes.

9 Q. And you were concerned that if prices kept  
10 going down, quality would keep going down, and the  
11 customers would no longer want your products?

12 A. Well, not that they didn't want our products.  
13 Because if the price was low enough, the customers would  
14 still buy it from us, but that they would return the  
15 products.

16 Q. And when you were talking about customers in  
17 that context, you were referring to distributors,  
18 retailers, wholesalers; is that right?

19 A. Yes.

20 Q. And you haven't had any experience directly  
21 with individual consumers; correct?

22 A. Correct. We've never sold retail.

23 Q. And you testified earlier this morning that at  
24 a certain point you decided you wanted a logo so customers  
25 would know the glasses were your product; is that right?

1 A. Yes.

2 Q. And again, those customers you're talking  
3 about are wholesalers, retailers, and distributors;  
4 correct?

5 A. Yes.

6 Q. Did you ever conduct any surveys after you  
7 introduced the sunglasses with logos to determine whether  
8 your customers, in fact, did recognize the logo as your  
9 brand?

10 MR. WILTON: Objection. Vague.

11 A. I don't understand what you mean by what type  
12 of surveys.

13 Q. Did you ever hire a company to conduct a  
14 survey to see if purchasers of sunglasses with your logo  
15 knew that they were Jay-Y glasses?

16 A. No, because these types of surveys are very  
17 expensive. We couldn't afford it, and also it wasn't  
18 necessary.

19 Q. Why wasn't it necessary?

20 A. Well, for the customers if it sold well, then  
21 they would make repeat orders for us. So I don't need to  
22 know that.

23 Q. You testified this morning that somewhere in  
24 the period of the early 90s you first thought of putting a  
25 brand on Jay-Y sunglasses; is that right?

1 A. Yes. We placed a logo.

2 Q. And DG, CG, and Challenger were the first  
3 brands or logos -- let me back up a step.

4 I think you testified that you understand  
5 trademark or brand or logo are interchangeable. They mean  
6 the same thing; is that right?

7 A. Yes, to me. I really don't know what the  
8 differences are, so to me they are all the same.

9 Q. And is it correct that DG, CG, and Challenger  
10 were the first logos you came up with for the Jay-Y  
11 glasses?

12 A. Yes.

13 Q. You said that you had gone to the factories  
14 that you had been working with and asked them to do  
15 drawings of the certain brands for you; is that right?

16 A. Yes.

17 Q. And did you direct them as to how to do the  
18 drawings?

19 A. Well, you can say that we were working  
20 together when they drew it. I would tell them, you know,  
21 what I liked and what I didn't like and why I didn't like  
22 it.

23 Q. You testified this morning that at trade shows  
24 in 1994 you displayed glasses with DG logos; is that  
25 correct?



1 A. Yes.

2 Q. Do you know how many styles total Jay-Y  
3 offered in 1994?

4 A. I think there was just one.

5 Q. Okay. Do you know how many styles of any  
6 sunglasses Jay-Y offered in 1994?

7 A. There were many. I don't remember.

8 Q. Can you give me an approximation? More than  
9 50?

10 A. Yes.

11 Q. More than 100?

12 A. I believe so.

13 Q. More than 200?

14 A. I don't know.

15 Q. So somewhere a little bit more than -- sorry.  
16 So at least 100 different models you think you offered in  
17 1994?

18 A. Yes.

19 Q. And you said that all those models were  
20 displayed at the trade show in 19 -- the trade shows you  
21 attended in 1994?

22 A. Yes.

23 Q. I think you testified that purchasers perhaps  
24 purchased sunglasses to sell in gas stations?

25 A. Yes.

1 Q. How do you know that?

2 A. Well, because one of my customers is a  
3 distributor who services gas stations.

4 Q. I think you testified earlier that there was a  
5 period of time in or about 2004 when you left the United  
6 States to go receive treatment in Taiwan; is that correct?

7 A. Yes.

8 Q. And you were there for about nine months; is  
9 that right?

10 A. Yes.

11 Q. And when you came back to the US in 2005, you  
12 began going to the Jay-Y offices one or two times a week  
13 for a couple of hours a day?

14 A. Yes.

15 Q. And in 2006 did you continue going to the  
16 Jay-Y offices?

17 A. Yes.

18 Q. Do you remember about how often you went in  
19 2006?

20 A. In '06, probably it was about once a week.  
21 But I don't remember.

22 Q. What about in 2007?

23 A. From what I can recall, in '07, '08, and '09,  
24 slowly the times decreased. It was probably once a week,  
25 and then it decreased to maybe once every ten days. And

1 then in 2010 I practically didn't even go.

2 Q. You understand that this deposition today  
3 relates to a cancellation proceeding that was commenced by  
4 Gado against Jay-Y regarding two registrations for the  
5 mark DG; correct?

6 MR. WILTON: Objection. Lack of foundation.

7 Q. Are you familiar with the cancellation  
8 proceeding in connection with which we're having this  
9 deposition today?

10 A. I'm not familiar. This is my first time.

11 Q. Okay. The question is not whether it's your  
12 first time being deposed. The question is: Do you  
13 understand that the deposition relates to a cancellation  
14 proceeding?

15 A. My son did tell me. So but I don't know  
16 whether or not my understanding and your understanding is  
17 there a difference that I don't know.

18 Q. Okay. Well, earlier today with Mr. Wilton you  
19 testified about asking a computer consultant to go through  
20 certain records in the SBT computer system for you; is  
21 that correct?

22 A. Yes.

23 Q. And I think you testified your recollection  
24 was that you did that sometime in 2009?

25 A. Yes. It was after my son had asked me, and I

1 went to help out.

2 Q. What did he ask you?

3 A. He asked me when did we start using DG.

4 Q. Had he ever asked you that question prior to  
5 2009?

6 A. No.

7 Q. Do you know why in 2009 he asked you that  
8 question? Did he explain in 2009 why he was asking that  
9 question?

10 A. No. You would have to ask him. Ask him  
11 directly.

12 Q. Currently today as you sit here, do you  
13 understand that there is a legal proceeding between Jay-Y  
14 Enterprises and Gado?

15 A. Yes. My son as well as Ken, they have both  
16 explained that to me.

17 Q. In 2009 did you understand that there was a  
18 legal proceeding between Jay-Y and Gado?

19 A. What kind of legal proceeding? I don't know.

20 Q. Well, this legal proceeding. In 2009 did you  
21 understand that this legal proceeding was under way  
22 between Jay-Y and Gado?

23 A. Yes. My son told me.

24 Q. Do you know when you first learned that there  
25 was a legal proceeding under way between Jay-Y and Gado?

1           A.       It was in the beginning of '09.

2                   (Recess.)

3           MR. LERNER: Can you repeat the last question  
4 and answer?

5                   (The record was read.)

6           THE WITNESS: Yes. 2009 in the beginning.

7           Q.       BY MR. LERNER: Do you recall being asked any  
8 questions by ward in late 2007 regarding the DG marks?

9           A.       I think he did ask me how did DG and CG come  
10 about.

11          Q.       Do you recall what you told him?

12          A.       Well, I remember telling him that CG was  
13 either Cool Girl or Cool Glasses and DG was Designer  
14 Glasses.

15          Q.       And do you remember discussing with him at all  
16 the timing of the creation of those marks?

17                   MR. WILTON: Objection. Vague as to time.

18          Q.       In late 2007 when he asked you about those  
19 marks. Do you recall discussing the timing of their  
20 creation?

21          A.       No.

22          Q.       In 2007 when he asked you about the CG and DG  
23 marks, do you recall whether he told you why he was  
24 asking?

25          A.       No.

1 Q. Did you have any understanding at that time  
2 that there was a legal proceeding between Jay-Y and Gado?

3 A. I didn't know.

4 Q. At that time did Ward ask you any questions  
5 about documents related to the sale of glasses by Jay-Y  
6 with the marks -- with the mark DG?

7 A. No. That's why -- 1999 to 2000, whatever he  
8 gave to the attorney. I didn't know. I didn't see it.

9 Q. Not 1999. In 2007. In late 2007 when you  
10 were discussing the DG and CG marks with him, did he ask  
11 you about the existence or location of documents related  
12 to the sale of glasses with the DG mark by Jay-Y?

13 A. In '07, no.

14 Q. Do you know whether the SBT computer system  
15 was still being used by Jay-Y in 2007?

16 A. That I don't know.

17 Q. Do you know whether the SBT system could be  
18 accessed by Jay-Y in 2007?

19 A. Well, we have a computer backup. So if you  
20 put the backup into the computer, then you can use it.

21 Q. Is that what the computer consultant did in  
22 2009 to find the records that I guess are Exhibits 131  
23 through 173?

24 A. Yes.

25 Q. So to your knowledge, could that have been

1 done in 2007?

2 MR. WILTON: Objection. Lack of foundation.

3 A. I believe so.

4 Q. That's too bad. So to your knowledge, could  
5 someone wanting to access records from the SBT system have  
6 put that archive to access the records? Could that have  
7 been done in 2007?

8 A. I believe so.

9 Q. When you were going to the offices of Jay-Y in  
10 2007, I think you said approximately once a week or maybe  
11 once every ten days in that period, did you discuss the  
12 business with your son Ward?

13 A. Probably not, because he was running the  
14 business quite well. So when I went, I would just go and  
15 just take a look at the company, look at the books because  
16 he wasn't a very familiar with the books or didn't  
17 understood the books that well. So I would go and look at  
18 the books and see if there were any problems. And  
19 sometimes, because he may have left the customers owe the  
20 company too much, so I wanted to just see whether he was  
21 allowing them to do that.

22 Q. You said in 2009, when you told Ward that  
23 Jay-Y started using DG very early on, you tried to make a  
24 list of the models numbers that had the DG mark; is that  
25 right?

1 A. Yes.

2 Q. And you said you looked in catalogs to find  
3 those model numbers?

4 MR. WILTON: Objection. Lack of foundation.

5 A. Yes.

6 Q. Did you testify earlier this morning about  
7 trying to create a list of model numbers that had the DG  
8 mark?

9 A. Yes.

10 Q. Was one of the ways you tried to do that by  
11 looking in catalogs?

12 A. Yes.

13 Q. How else?

14 A. No. Because I was the one who placed the  
15 orders. I was the one who sold them. And so when I  
16 looked at the catalogs, it would help me think. But  
17 without the catalogs, there's no way for me to think to  
18 remember. So I believe there may be other styles that  
19 have the DG logo, but there's just no way for me to  
20 remember them.

21 Q. You said that once you had a list of the  
22 possible model numbers that might have a DG mark you went  
23 to the showroom factory and the warehouse to look for  
24 those models to see if you had samples; is that right?

25 A. Yes.



1 Q. **REDACTED**

2 A. **REDACTED**

3

4 Q. And where are those factories located?

5 A. They are all in China.

6 Q. Did you personally go to those factories?

7 A. Are you asking about when I was searching for  
8 these samples?

9 Q. Yes.

10 A. No, I called them on the phone to ask them to  
11 look.

12 Q. Did either of the factories send you sample  
13 glasses in response to that call?

14 A. Yes. They found some, and then they sent  
15 those to me. But some of those they couldn't find. They  
16 couldn't.

17 Q. Do you know which models came from these  
18 factories?

19 A. Yes.

20 Q. Which ones?

21 A. I'm not 100% sure, but like these I'm very  
22 sure about (indicating). But the others it's difficult to  
23 remember whether or not they were or not. Because these,  
24 they had written those numbers on. And these are from our  
25 warehouse (indicating). These without the stickers I

1 don't know where they were. I don't remember.

2 Q. So when you referred to "these" that the  
3 factory put on the glasses, just so our record is clear,  
4 you're referring to model NK609, TM1012, T5009/R, T5010 --

5 A. And T2012 I remember very.

6 Q. When you say 20, you mean 00?

7 A.

**REDACTED**

8  
9 Q. You testified earlier that when a person in  
10 the warehouse following receipt of an order that a person  
11 in the warehouse was responsible for creating invoices; is  
12 that right?

13 A. Receiving?

14 Q. So a salesperson would receive an order;  
15 correct?

16 A. Yes. Because what I heard was should be  
17 sales, not receiving.

18 Q. Okay. I don't mean receiving as in receiving  
19 of shipments. I mean taking an order. So a salesperson  
20 would take an order?

21 THE WITNESS: (In English) What I heard from  
22 you is different than what she explained. Sorry.

23 THE INTERPRETER: It's okay.

24 Q. BY MR. LERNER: So let's back up.

25 I believe you testified earlier that a

1 salesperson would receive an order from a customer.

2 A. Yes.

3 Q. Would then input a customer, model number,  
4 price, quantity into the SBT system.

5 A. Yes.

6 Q. That salesperson then printed an order from  
7 the SBT system and took the order to the warehouse?

8 A. Yes.

9 Q. And then after somebody in the warehouse  
10 pulled together the order and arranged for shipping,  
11 someone in the warehouse was responsible for creating an  
12 invoice; correct?

13 A. Yes.

14 Q. And you said that three copies of an invoice  
15 were created; correct?

16 A. Yes.

17 Q. One for the customer?

18 A. Yes.

19 Q. One for Accounting?

20 A. Yes.

21 Q. And one for the salesperson?

22 A. Yes.

23 Q. What did Accounting do with the invoice after  
24 they received it?

25 A. Well, they would collect it and arrange it and

1 keep it in case there's an audit or anything, or in the  
2 future when there's anything that needed to -- any kind of  
3 records that needed to be displayed, then they can take it  
4 from there.

5 Q. And where were those invoices kept?

6 A. It's kept in our warehouse. When IRS does an  
7 audit, then they will try to match up -- match it up with  
8 the invoices.

9 Q. How long after creation did Jay-Y keep  
10 invoices?

11 A. Is he asking about the accountant or the  
12 sales?

13 Q. Well, accounting right now. You said that  
14 Accounting would file them in case of an IRS audit. So  
15 how long did Accounting keep those invoices at the Jay-Y  
16 warehouse?

17 A. My CPA told me I only need to keep it for  
18 seven years. But generally if I could keep it, I would  
19 try to keep it for longer.

20 Q. Do you know whether any invoices were, in  
21 fact, kept for longer than seven years?

22 A. That question you would have to ask him  
23 (pointing).

24 Q. By "him," you mean Ward Chen?

25 A. Yes. (In English) Sorry.

1 Q. And what about the copy that went to the  
2 salesperson? What did the salesperson do with the invoice  
3 after receiving it?

4 A. Well, generally for each customer they would  
5 have a file. So they would put that into the customer's  
6 files. So when the customer makes an order again, they  
7 would take it out just as reference.

8 Q. And where did the salesperson keep their  
9 files?

10 A. They would keep it near them in their file  
11 cabinet.

12 Q. At the offices of Jay-Y?

13 A. Yes.

14 Q. For how long?

15 A. Oh, that depends. For example, there are some  
16 customers that order all the time, so it's really thick.  
17 And so possibly they would have cut those from last year.  
18 When perhaps there are customers that don't make as many  
19 orders, and perhaps in the file there may be three to five  
20 years' worth.

21 Q. I think you testified earlier that the  
22 Accounting Department would do the receiving process. Do  
23 you recall that?

24 A. Yes.

25 Q. And I think you said that involved pulling up

1 a model number and entering the quantity received, either  
2 as a partial or a complete fulfillment.

3 A. Yes.

4 Q. And you said, I believe, that that was done by  
5 model number rather than by purchase order number; is that  
6 right?

7 A. Yes.

8 Q. I think you said that you could choose to key  
9 in either a purchase order number or a model number into  
10 the SBT system, is that right, as part of the receiving  
11 process?

12 A. Yes.

13 Q. And you said by entering a model number it  
14 would show how many of that model were outstanding; is  
15 that right?

16 A. Yes.

17 Q. Did different factories produce the same model  
18 numbers?

19 A. Normally it's one factory that would produce  
20 one model number. But sometimes maybe another factory  
21 would be less expensive or perhaps there was one factory  
22 that produced one model number, and then it switched to  
23 another factory.

24 Q. I think you testified earlier today that the  
25 SBT computer system had information regarding every model

1 purchased and sold by Jay-Y; is that right?

2 A. Yes.

3 Q. And you engaged a computer consultant to aid  
4 you in retrieving purchase orders and sales orders  
5 regarding models featuring the DG marks; correct?

6 A. Yes.

7 Q. And you did that in or about 2009; correct?

8 A. Yes.

9 Q. Could a computer consultant have helped you  
10 retrieve that information in 2008?

11 A. Yes.

12 Q. What about in 2007?

13 A. Yes.

14 Q. Showing the witness Exhibit 131.

15 I think you testified earlier that the  
16 information shown on page 2 and 3 of this exhibit is  
17 information from the SBT computer system that was  
18 retrieved by the computer consultant; is that right?

19 A. Yes.

20 Q. I think you also indicated that the SBT  
21 computer system was updated by an accountant based on  
22 orders that were received by Jay-Y; is that right?

23 A. Yes.

24 Q. I think you also testified that you had to  
25 wait for goods to be received in order for them to be

1 inventory ready to be sold?

2 A. Yes.

3 Q. Can you explain what you mean by "inventory  
4 ready to be sold"?

5 A. Well, what I meant was when the goods was  
6 received, then once it's entered into the computer, then  
7 it immediately directly becomes inventory. So when the  
8 computer has inventory, then the salespeople can sell it.

9 Q. So does Exhibit 131 show you inventory ready  
10 to be sold of the models that are identified here?

11 A. Well, in each of those what is received, that  
12 quantity that could be sold. Well, but perhaps before it  
13 was received maybe in the computer there was already  
14 existing inventory, so that would be added to it.

15 Q. So, for example, in the first line of Exhibit  
16 131 on page JY00500, for item 252A it says in the fourth  
17 column, Quantity 150. Is it correct, then, that's a new  
18 running total of inventory as of the received date, April  
19 3, 1996?

20 MR. WILTON: Objection. Vague and ambiguous.

21 Q. Do you understand what I mean by running  
22 total?

23 A. I don't.

24 Q. Well, you said a minute ago that a number  
25 might be added to inventory that's already in the system.



1 So I'm trying to determine whether the quantity in this  
2 column 150 in that first line, is that the total total  
3 received on that date? Or is that the total of everything  
4 that's in the system as of that date? That's what I mean  
5 by "running total."

6 So rather than the number received on a  
7 particular day, is this the number received plus anything  
8 that was already there beforehand?

9 MR. WILTON: Objection. Vague.

10 A. Well, like I was saying earlier, let's say  
11 before this came in there was already some quantity that  
12 was existing. So when it was received, they would be  
13 added onto it. But, for example, let's say if this was  
14 already sold out. So the quantity would be zero. So when  
15 the goods were received, that's 150, then it would be just  
16 150.

17 Q. Okay. But if there were already, say, 50  
18 units in inventory of 252A, --

19 A. All right.

20 Q. -- would the quantity that is updated in the  
21 SBT system from a particular shipment reflect just the  
22 number received in that shipment or the total of that  
23 model number now in inventory?

24 A. Of course, the total. Let's just say if there  
25 was an existence of 50, and then I received a hundred,

1 then you add together, and that will equal 150.

2 (Pause in proceedings.)

3 A. Is this correct, the answer?

4 Q. I'm not sure, so I'm going to ask.

5 In the first line on the page we've been  
6 looking at on Exhibit 131, the Quantity 150, does that  
7 reflect quantity that was received on the receipt date  
8 shown in the next column April 3, 1996?

9 A. Yes. For example, let's just say that 150 was  
10 received on April 3rd. Then there would be 150. But  
11 let's just say on April 10th 100 was sold. And then so  
12 there would be 50 left in the inventory. So on April 18th  
13 when 150 is received, then the total inventory would be  
14 200.

15 Q. Okay. But the quantity in the column here  
16 only shows the number received on that day, not the total  
17 in inventory as of that date?

18 A. Naturally, because this one is purchasing  
19 history, not the inventory history.

20 Q. Okay. Would you look for me at Exhibit 132.  
21 And on the first page of that exhibit on the upper  
22 right-hand corner there's a handwritten number 96-25.

23 A. Yes.

24 Q. I believe you testified earlier that your  
25 accountant came up with this numbering system, but you

1 wrote this -- you recognize this as your writing on this  
2 invoice; is that right?

3 A. Yes.

4 Q. And is it correct that this is a unique  
5 identifying number, such that there would only be one  
6 shipment No. 25 in 1996; correct?

7 A. Yes.

8 Q. I think you testified earlier that Exhibit 132  
9 you located these documents after the computer consultant  
10 pulled the Purchase History Report for -- that's shown by  
11 Exhibit 131; correct?

12 A. Yes.

13 Q. And if one wanted, one could match up the  
14 documents in Exhibit 132 to the data in 131 by looking at  
15 the shipment identification number, for example 96-25?

16 A. To match with what?

17 Q. The data that's in Exhibit 131. So if I  
18 wanted to see the backup for 131, that is in 132, I can  
19 look at the number that you've written here at the top of  
20 JY00502. And match it with the number in the shipment  
21 column in Exhibit 131; is that correct?

22 A. Yes.

23 Q. So the last column in Exhibit 131 is the  
24 shipment number. That was this number your accountant  
25 came up with. And you or somebody else at Jay-Y would

1 write on the various invoices that are collected in  
2 Exhibit 132; correct?

3 MR. WILTON: Objection. Misstates her  
4 testimony.

5 Q. Let me back up. Did anybody besides you write  
6 the unique identifier numbers on the various invoices in  
7 Exhibit 132?

8 A. (In English:) You're talking about this  
9 number (indicating)?

10 (Through Interpreter:) Well, actually let me  
11 explain this number. Generally, when the factory ships a  
12 shipment, they would normally fax us the documents, and  
13 then we would have to go report it to Customs. So when my  
14 accountant receives a complete set of documents to be  
15 reported to the Customs, then my accountant would make a  
16 complete file.

17 So, for example, let's say if it was shipped  
18 in, let's say, in December of 1995, but it was not  
19 received until 1996, then in the file it would be 1996  
20 then -1 for the first shipment, and then the second  
21 shipment would be -2. And the first shipment would be -3.

22 Q. Okay. And who wrote those numbers on the  
23 invoices in Exhibit 132?

24 A. The original on the cover that was -- it was  
25 the accountant came up with the number. It was the

1 accountant who wrote down that number. So this is what I  
2 had copied from that.

3 When I was preparing these documents, then I  
4 wrote these on there.

5 Q. And so then my question ultimately is: Is  
6 that set of numbers that we've just been discussing, so  
7 for example the 96-25, are those numbers reflected in the  
8 final column in Exhibit 131?

9 A. Yes. So, for example, if you want me to  
10 produce, let's say, the import duties or the Customs  
11 duties documents or the Customs broker's bill, then I  
12 could just look at this number, and it would be very easy  
13 for me to locate those documents.

14 Q. Not my question. But as long as we're on it,  
15 have you ever attempted to locate those documents?

16 A. No.

17 Q. My question was, very simply: Is this column  
18 that reflect these numbers in Exhibit 132, these numbers  
19 being 96-25, for example.

20 A. Yes. Yes.

21 Q. And those numbers are unique; correct? You  
22 won't have more than one invoice with a particular number  
23 under that system?

24 A. Well, unless on here there are two models that  
25 are on the same invoice, and then would be the numbers

1 would be in two different places in here.

2 Q. But there would only be one invoice --

3 A. But this document --

4 Q. -- with that number --

5 A. But this document is just this one. Yes.

6 Yes.

7 Q. Looking at the first column in Exhibit 131.

8 PO No. What does that represent?

9 A. The PO number is when we first place the  
10 order. That's the number that is generated automatically  
11 by the computer.

12 Q. Is that number reflected anywhere on the  
13 invoices or other documents in Exhibit 132?

14 A. No. Like I said earlier, when we received a  
15 shipment, it may not be -- all the shipments may not be  
16 from the same purchase order. And that's why when we  
17 receive the goods. We would pull up the model number.

18 Q. Okay. But each line here related to a model  
19 number has a particular purchase order. How were those  
20 connected?

21 A. No. For example, let's say if I would place  
22 an order for two models. Then that would be on the PO.  
23 Let's say another day I would enter another order. I  
24 would place another order. It would be on the same PO.  
25 Then another day I may enter another five orders. It

1 would still be on the same PO.

2 (In English:) No, no, no, no, no.

3 THE INTERPRETER: Interpreter needs to clarify  
4 what was said.

5 A. So let's say if today I placed one order, so  
6 then maybe just two models. So that's one PO number. And  
7 so that would be a date. This is a date that I placed it.  
8 Maybe two days later then I may input five items. Then  
9 that would be another PO. And then maybe another two days  
10 afterwards then I may input another 20 items. And then  
11 that would be another PO.

12 But for each PO, we don't know when they would  
13 ship the goods. And also we don't know whether or not the  
14 shipment would be a complete shipment or just a partial  
15 shipment. So that's why when we receive the goods, that's  
16 why we would go by the item number. So there's no way for  
17 us to pull up one PO. It would be the entire PO.

18 Q. So again, I believe you testified that after  
19 the computer consultant printed Exhibit 131 for you, or at  
20 least the second and third pages of 131 for you that you  
21 looked in the files to see if you could find the  
22 underlying invoices from your vendors to reflect this  
23 data; is that correct?

24 A. Yes.

25 Q. How did you do that? How did you find the

1 right invoices to match up to this data?

2 A. Well, I would search from the records that my  
3 accountant had kept by looking at the receipt date.

4 Q. Do any of these documents in Exhibit 132 show  
5 received date?

6 A. But you could calculate the time from it being  
7 in the ocean or on the ocean for two weeks. And then  
8 maybe sometimes in Customs it may be there for about a  
9 week. So you can calculate a time in that way. And then  
10 when I looked at the quantity and the price, if they  
11 match, then I know that this is the correct one.

12 Q. So you found supporting invoices by estimating  
13 the time that the shipments would have been received?

14 MR. WILTON: Objection. Misstates her  
15 testimony.

16 A. Yes.

17 (A discussion was held off the record.)

18 MR. LERNER: So on the record, Counsel and the  
19 witnesses and others have discussed that we're, based on  
20 the amount of cross that's left, that we're going to  
21 reconvene this deposition at a time, date, and place to be  
22 determined among counsel.

23 And I will just state for the record that  
24 Mr. Wilton has provided the court reporter with a list of  
25 the exhibits that he marked with identification of the



1 Bates range for each of those exhibits for the court  
2 reporter to incorporate in an index of exhibits.

3 MR. WILTON: And that I will retain custody of  
4 the original exhibits, the ones with the exhibit stamps.  
5 But I would also represent for the record that they are  
6 simply printouts from documents previously produced in the  
7 proceeding that I know Counsel for Petitioner has on the  
8 CD somewhere.

9 MR. LERNER: I think that's it for now except  
10 to thank the interpreter and witness for their stamina and  
11 patience.

12 MR. WILTON: And the court reporter.

13 MR. LERNER: And the court reporter. Yes.

14 (A discussion was held off the record.)

15 MR. WILTON: The stipulation is a different  
16 stipulation than we'd have in California, which makes it  
17 confusing. But given that this will be Volume 1 of the  
18 deposition, I will suggest that we just stipulate that the  
19 Volume I will be prepared in due course.

20 And while copies can be forwarded to counsel,  
21 we will hold off on asking the witness to review and sign  
22 until Volume II is completed, at which time we will enter  
23 into an appropriate stipulation.

24 MR. LERNER: So stipulated.

25 (The proceedings adjourned at 7:15 p.m.)

## C E R T I F I C A T E

STATE OF CALIFORNIA )

) SS.:

COUNTY OF LOS ANGELES )

I, CHRISTY A. CANNARIATO, a Certified  
Shorthand Reporter within and for the State  
of California, do hereby certify:

That Teresa Chen, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 18th day of February 2011.



CHRISTY A. CANNARIATO, CSR #7954

CASE NAME: Gado v. Jay-Y

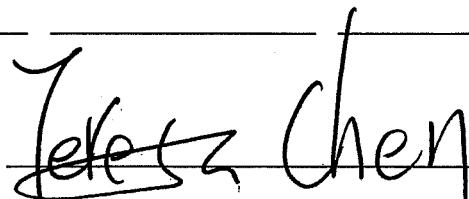
DEP. DATE: February 8, 2011

DEPONENT: Teresa Chen, Vol I

[illegible]

## ERRATA (Cont'd)

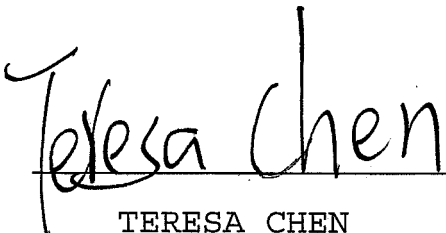
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Signature of Deponent

1 STATE OF CALIFORNIA )  
2 )- SS  
3 COUNTY OF LOS ANGELES )  
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13 I, the undersigned, declare under penalty of  
14 perjury that I have read the foregoing transcript, and I  
15 have made any corrections, additions or deletions that I  
16 was desirous of making; that the foregoing is a true and  
17 correct transcript of my testimony contained therein.

18 Executed this 28 day of May, 2011, at  
19 Pomona, CA.  
20 (City) (State)  
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25

  
TERESA CHEN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GADO S.A.R.L.,

Petitioner,

vs.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

AND RELATED COUNTERCLAIM

 **ORIGINAL**

Cancellation No.  
92047433

VOLUME II

CONTINUED EXAMINATION OF TERESA CHEN  
LOS ANGELES, CALIFORNIA  
WEDNESDAY, MARCH 23, 2011

REPORTED BY:

LESLIE L. WHITE

CSR NO. 4148

JOB NO.: 37369A

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WEDNESDAY, MARCH 23, 2011

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9:37 a.m.

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Continued Examination of TERESA

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CHEN, Volume II, held at 333 South Hope

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Street, Suite 3900, Los Angeles, California,

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before Leslie L. White, CSR No. 4148.

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1           A P P E A R A N C E S:

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10  
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12           Attorneys for Petitioner and Counterclaim  
13           Defendant

14                 230 Park Avenue

15                 New York, New York 10169

16           BY:   MARK LERNER, ESQ.

17  
18  
19  
20  
21           ALSO PRESENT:

22                 FRANCES CHOW, MANDARIN INTERPRETER

23                 WARD CHEN



I N D E X

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RECROSS EXAMINATION BY MR. LERNER		247

E X H I B I T S

(NONE OFFERED)

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

(NONE)

INFORMATION REQUESTED

(NONE)

REQUESTED TO BE MARKED

(NONE)

1           LOS ANGELES, CALIFORNIA; WEDNESDAY, MARCH 23, 2011

2                           9:37 a.m.

3  
4                           TERESA CHEN,  
5                   the witness herein, having been  
6                   first duly resworn, was examined  
7                   and testified further as follows:

8  
9                           CROSS EXAMINATION (Resumed)

10          BY MR. LERNER:

11               Q       Good morning, Ms. Chen. As you may  
12               recall, my name is Mark Lerner, and I represent the  
13               Petitioner in this matter, Gado.

14               Today we're here as a continuation of the  
15               deposition that was commenced on February 8th, and  
16               all the rules that applied on February 8th apply  
17               today.

18               You're here pursuant to a Notice. The  
19               interpreter will interpret my questions. You will  
20               wait -- I think the fact that there is an  
21               interpreter will mean that you have to wait until  
22               the question is done, but please do wait until the  
23               question is finished before answering.

24               If you don't understand a question and you  
25               need clarification, ask the interpreter to ask me.

1           Also, while I suspect today won't go as  
2           long as the deposition did on February 8th,  
3           certainly it is not a test of stamina, and if you  
4           need to take a break at some point, mention that to  
5           the interpreter, and we'll find an appropriate  
6           stopping point if you need a break.

7           A     All right. Thank you. I understand.

8           MR. LERNER: Do you have anything to add, Ken?

9           MR. WILTON: No.

10          BY MR. LERNER:

11           Q     Ms. Chen, you may recall when the  
12           deposition began you had indicated that you made a  
13           list of models that you believed had the mark "DG"  
14           on them.

15                   Do you recall that?

16           A     Yes.

17           Q     Okay. And then you set about to attempt  
18           to gather actual physical examples of those glasses  
19           on the list that you had made; is that right?

20           A     Yes.

21           Q     And some circumstances you indicated that  
22           you didn't have samples of those glasses in your  
23           showroom; correct?

24           A     Yes.

25           Q     And in some cases you didn't have samples

1 of those glasses in your warehouse; correct?

2 A That's correct.

3 Q Okay. So you contacted some factories  
4 that had manufactured glasses for Jay-Y to see if  
5 they had samples of those glasses; is that right?

6 A Yes.

7 Q You didn't go to those factories yourself,  
8 though; correct?

9 A Correct.

10 Q Yet, as a result your asking factories to  
11 send you glasses that they had that were on the list  
12 that you had created, you did receive some glasses;  
13 correct?

14 A Yes.

15 Q You have no way of knowing where the  
16 factory got those glasses that they sent you;  
17 correct?

18 MR. WILTON: Objection. Vague and ambiguous.

19 THE WITNESS: I only made a request of them,  
20 and maybe they -- well, I just made request of them,  
21 so they might have contacted other factories that  
22 might help, that might have manufactured for them.  
23 They may be in their showrooms, or they may have  
24 asked people, other factories who have manufactured  
25 for them to look for it. So I don't really know how

1 they found it.

2 MR. LERNER: Off the record for a second.

3 (A discussion was held off the record.)

4 BY MR. LERNER:

5 Q Ms. Chen, what I'm doing right now, so the  
6 record is clear, I'm setting out on the table the  
7 physical sunglasses that are depicted by pictures in  
8 Exhibits 100 through 130.

9 And I believe earlier in the deposition  
10 you had identified certain of these glasses that you  
11 believed had been sent to you at your request by one  
12 or more factories.

13 Do you recall that?

14 A Yes.

15 Q Looking at the glasses that are arrayed on  
16 the table, are you able to identify for me those  
17 glasses that were sent to you by a factory rather  
18 than having been found in Jay-Y's showroom or  
19 warehouse?

20 A Well, like this, it is very difficult for  
21 me to find out which is which because I can't  
22 remember it.

23 Q Maybe this will help refresh your  
24 recollection. I think earlier in the deposition you  
25 indicated that certain of the glasses had labels

1 that the factory put on the glasses.

2 Do you recall that?

3 A Perhaps it was on that day I saw this  
4 label (Indicating), but over here I don't see that  
5 label. Oh, here's one.

6 Without these labels there is no way for  
7 me to differentiate.

8 Q When you say "these labels," you're  
9 referring to a white paper label that has both typed  
10 "Jay-Y Co." and some handwritten numbers on them; is  
11 that right?

12 A

13 **REDACTED**  
14  
15  
16  
17  
18

19 Q Just so the record is clear, when you say  
20 these labels are the ones that are used in the  
21 warehouse, you're referring to, for example, to the  
22 white label with typewritten number "2509 HP/R," for  
23 example, that is shown -- that is depicted in the  
24 picture in Exhibit 105.

25 So when you say these labels were the ones

1 that were used in the warehouse, you're talking  
2 about the kind of label that appears in the image on  
3 Exhibit 105?

4 A Yes, yes.

5 Q And as to other labels, for example, the  
6 one on Jay-Y TM-1012, which is shown in Exhibit 129,  
7 that's the type of label you're saying was not used  
8 by Jay-Y; correct?

9 A Correct.

10 Q So is it your belief, then, that the  
11 glasses which are put on the table that have  
12 that second type of label, for example, that was  
13 shown in Exhibit 129 were glasses that were sent to  
14 you by a factory rather than ones that we found in  
15 your warehouse?

16 A Yes, yes.

17 Q Now specifically as to those glasses --  
18 and I believe you pulled out five that have similar  
19 type of label with handwriting on them -- am I  
20 correct that you don't know with any certainty where  
21 the factory acquired those glasses that they then  
22 sent to you; is that right?

23 A Correct.

24 Q And you don't know whether those glasses  
25 had been kept by those factories in their possession

1 prior to sending them to you; correct?

2 MR. WILTON: Objection. Vague and ambiguous.

3 BY MR. LERNER:

4 Q Did you understand the question? Let me  
5 back up. I think because you indicated a little  
6 earlier that when you called the factories you  
7 weren't sure what they did to find glasses; correct?

8 A Uh-huh.

9 Q You have to answer yes or no.

10 A Can you repeat the question? I want to  
11 make sure I understand the question.

12 Q Yes. I believe you testified earlier that  
13 when you call the factories to see if they could  
14 provide sample of glasses in the list that you had  
15 made that you believed had "DG" on them, you weren't  
16 sure then what those factories did to find samples  
17 of the glasses; correct?

18 A Correct.

19 Q And you said you thought, in certain  
20 circumstances, they might have called another  
21 factory to obtain a sample of the particular models;  
22 correct?

23 A Well, for that point if they manufactured  
24 it, then it should be in their warehouse or in their  
25 showroom, but if they did not manufacture, they let



1 another factory manufacture them, then the glasses  
2 should be in that factory showroom or warehouse --  
3 or maybe not the warehouse, but where they would --  
4 a storage area where they would keep their samples.

5 Q So you said that if a particular factory  
6 manufactured a certain style of glasses or model of  
7 glasses they should be in their showroom, but you  
8 have no way of really knowing whether they were or  
9 not; correct?

10 A Correct. For example, like even for us,  
11 perhaps maybe some of the glasses might have been  
12 lost, or maybe we had used them all up, and there is  
13 nothing left over.

14 Q But as to the glasses they did send, you  
15 had no way of knowing where physically the glasses  
16 had been kept prior to the factory sending it to  
17 you; correct?

18 A Correct.

19 Q In fact, you don't know whether those  
20 glasses might have been newly manufactured and sent  
21 to you; correct?

22 A I don't think they would have a way to  
23 manufacture it.

24 Q But you don't know?

25 A Correct.

1           Q     Ms. Chen, I'm going to show you what was  
2 previously marked as Exhibit 131, and I will ask you  
3 to look at page 2. That exhibit is open to page 2,  
4 and look nine lines down.

5                     Do you see under the "Item No." column  
6 there is an item No. "NK-6341/CM-"?

7           A     Yes.

8           Q     And am I correct that this number, model  
9 number is listed in the purchase records represented  
10 by Exhibit 131 because you asked a computer  
11 consultant to pull records related to purchase of  
12 that model number in 1996, from the SBT computer  
13 system? When I say "pull" I meant print out  
14 information related to the purchase of that model  
15 number.

16                   MR. WILTON: Objection. Lacks foundation.

17 BY MR. LERNER:

18           Q     Let me back up.

19                   Do you recall that Exhibit 131 is a  
20 document that you testified was printed by your  
21 computer consultant?

22           A     These are the information that he had  
23 taken out from the computer.

24           Q     The computer you're referring to is the  
25 SBT system that you testified earlier about?

1           A     Yes.

2           Q     Am I correct you previously testified you  
3     asked this computer consultant to print out from the  
4     SBT computer system data related to the purchase of  
5     the model numbers of Jay-Y glasses on the list that  
6     you had compiled and for which you were able to find  
7     glasses that are shown in Exhibits 100 through 130?

8           MR. WILTON:   Could you read that back, please.

9                     (The record was read.)

10          MR. WILTON:   Objection.   Misstates her  
11     testimony, but you can answer.

12          THE WITNESS:   Yes.   But may I request that you  
13     not ask such a long question because it makes it  
14     quite difficult.

15     BY MR. LERNER:

16          Q     Let me ask it again.

17                     Am I correct you asked a computer  
18     consultant to print out data from the SBT system of  
19     certain model numbers of Jay-Y glasses?

20          A     Yes.

21          Q     And Exhibit 131 is one such printout of  
22     data about model numbers?

23          A     Yes.

24          Q     And so looking down to the ninth row on  
25     the second page of Exhibit 131, is NK-6341/CM one of

1 the model numbers that you asked the consultant to  
2 print data about?

3 A Yes.

4 Q Can you locate in Exhibits 130 -- sorry,  
5 Exhibit 100 through 130 that model No. NK-6341.

6 A This one (Indicating).

7 Q In Exhibit 131, the model number  
8 referenced has a "CM" at the end. Is there a "CM"  
9 at the end of the model number on these glasses?

10 A "CM" means colored mirror lenders.

11 Q But "CM" isn't shown on the glasses  
12 itself; correct?

13 A Correct.

14 MR. WILTON: What exhibit number is that?  
15 Thanks.

16 BY MR. LERNER:

17 Q What then determined whether the "CM"  
18 would be used to identify the model number in the  
19 SBT system?

20 A I don't know how to answer that.

21 Q Well, why, if the glasses don't have a  
22 "CM" on it, why does the number that is shown from  
23 the SBT have a "CM"?

24 A Well, for example, perhaps the consultant  
25 had just typed in that number, and then the computer

1 then would search for those numbers. And then if,  
2 for example, let's say if we carried two types of  
3 lenses, like I say one says "DG"; right, the "DG"  
4 would show up as well as the "CM."

5 But if there is only one type of lens,  
6 only this one type would show up. So perhaps if  
7 during the search they found that there was two or  
8 three types of lenses, then it may -- then it would  
9 show that in this particular model there may be the  
10 different types of lenses.

11 So let's say for these particular glasses  
12 if it has "DG" on it, then that style would have  
13 "DG," and that would be that style, even though the  
14 lenses might be different, but the style is the  
15 same.

16 Q So even though the style was the same,  
17 though, different indicators let's call them were  
18 used in the SBT system to differentiate within a  
19 single style number; is that correct?

20 A If there is only -- the sample is only  
21 this one, then for this one we will only have this  
22 lens and no others. Perhaps for this one. We had R  
23 lenses, we had mirror lenses, and we have CM lenses.

24 Q What I'm trying to understand then for the  
25 glasses that have NK-6341 on them, in Exhibit 112,

1 why, if there is only one type of lens available,  
2 does the model number in the SBT system not exactly  
3 match the model that is on the arm of the glasses?

4 A Well, they have -- this is just to let our  
5 customers know that this is a CM lens. But what we  
6 have printed on the glasses is shorter. It is not  
7 very complete.

8 Like, for example, "NK-609" is not printed  
9 here, whether it is a CM or a mirror lens.

10 MR. WILTON: Objection. There is no question  
11 pending.

12 BY MR. LERNER:

13 Q But, for example, for the glasses shown in  
14 Exhibit 104, these glasses include the indicator  
15 "HP" at the end of the model No. 2311; correct?

16 A But the lenses are regular lens, and here  
17 is also the regular. The "R" is not printed.

18 Q So, Ms. Chen, let me you Exhibit 148 and  
19 turn it to page 2 for you. And just to confirm,  
20 Exhibit 148, is this also a printout of data that  
21 was printed by the computer consultant at your  
22 request?

23 A Yes, but these two columns here is to make  
24 it easier to locate the documents.

25 MR. WILTON: Wait. Objection. Nonresponsive.

1 Would you repeat the question, please.

2 THE WITNESS: Yes.

3 MR. WILTON: Would you repeat the question,  
4 please.

5 (The record was read.)

6 THE WITNESS: Yes.

7 BY MR. LERNER:

8 Q And let me draw your attention to the  
9 fifth line down. In the "Item No." column there is  
10 a reference to item No. 96007/R; is that right?

11 A Yes.

12 Q And is 96007/R a model number that you  
13 asked the computer consultant to print your data  
14 from the SBT system for 1997 for you?

15 A Yes.

16 Q Looking at Exhibits 100 through 130, can  
17 you locate for me which exhibit shows model No.  
18 96007?

19 A I can't find it. Maybe it is in one of  
20 the bottom pages. It is not here.

21 Q So am I correct, then, that you weren't  
22 able to find a physical sample of model No. 96007/R?

23 A Perhaps, but I thought there was a sample.

24 Q To the best of your knowledge, were all  
25 the samples that you found produced to Gado or at

1 least images of them produced to Gado by your  
2 attorney?

3 A Well, I thought that it was, but I don't  
4 remember because all this happened in 2009.

5 Q But to the best of your knowledge, any  
6 sample that you were able to locate you provided to  
7 your attorney to produce in this matter; is that  
8 correct?

9 A That's what I thought, yes.

10 Q Do you recall whether you were able to  
11 confirm, via a physical sample pair of sunglasses,  
12 whether "DG" appeared on model No. 96007/R?

13 A I do remember that at the corner there was  
14 the "DG" logo.

15 Q The question was do you recall being able  
16 to confirm that by means of a physical sample?

17 A I can go back and look, but if I couldn't  
18 find it then I really don't have a choice. I  
19 thought I had it.

20 Q So you think if you had it, it was  
21 produced among the array of 31 glasses that are  
22 represented by Exhibits 100 through 130?

23 A Can you repeat the question?

24 MR. LERNER: Can you read it back?

25 (The record was read.)



1 THE WITNESS: Right. Maybe I don't know where  
2 in the process it might have gotten lost.

3 BY MR. LERNER:

4 Q In fact, you don't know whether you ever  
5 actually had it in the process that you're referring  
6 to?

7 A It was because I had it. That's why I  
8 asked the computer consultant to pull out this  
9 information. But if I didn't have it or that the  
10 factory couldn't find it, then I had already crossed  
11 out those models.

12 Q Yet you asked the computer consultant to  
13 pull data related to model No. 96007/R?

14 A Yes.

15 Q I'll ask you to -- still looking at  
16 Exhibit 148 -- look down at line 8, line 8 through  
17 12, to see if item No. 96015/R is indicated in those  
18 rows.

19 A Yes.

20 Q And are you able to find an image of model  
21 No. 96015/R in Exhibits 100 through 130?

22 A Yes, I had just saw it. (Indicating).

23 Q Okay. And, again, though, Exhibit 109, on  
24 page JAY-Y11273, shows model 96015. It doesn't have  
25 an "R" on the glasses itself; correct?

1 A Correct.

2 Q Also focusing on model No. 96007, is that  
3 one of the models for which sales history data was  
4 printed by the computer consultant in Exhibit 152,  
5 which I'll show you?

6 A Yes.

7 Q Was that also a model for which sales  
8 history was printed by the computer consultant in  
9 Exhibit 154?

10 A Yes.

11 MR. WILTON: Just so the record is clear, can  
12 you tell us which lines, singular or plural, that  
13 you are referring to.

14 MR. LERNER: Yeah. And in Exhibit 152 I'm  
15 referring to data in lines 6 through 36 on page 5 of  
16 the exhibit, which is Bates numbered JAY-Y01687.

17 And for Exhibit 154 I'm referring to  
18 lines 1 through 21 on page 2 of the exhibit, which  
19 is Bates JAY-Y01940.

20 Q Earlier in the deposition you testified  
21 that after an order came in for a salesperson, that  
22 salesperson would type certain information into the  
23 SBT system; is that correct?

24 A Yes.

25 MR. WILTON: Can we have that read back, and

1 could you please give me a chance to object at some  
2 point.

3 (The record was read as follows:

4 "Q Earlier in the deposition you  
5 testified that after an order came  
6 in for a salesperson, that  
7 salesperson would type certain  
8 information into the SBT system; is  
9 that correct?")

10 MR. WILTON: I'm fine. I heard something  
11 different.

12 THE WITNESS: Yes.

13 BY MR. LERNER:

14 Q When was that information typed in by the  
15 salesperson following receipt of an order?

16 A Generally on the same day. On the day  
17 that the order was received.

18 Q Generally, but not in all circumstances?

19 A Well, perhaps if the salesperson was very  
20 busy and that person might have a lot of orders,  
21 then it may happen on the following day.

22 Q Did that ever happen two days following?

23 A I don't believe so. But in a trade show  
24 when we receive a lot of orders, then it could be.

25 Q Do you have any way of telling through the

1 SBT system which orders came in through a trade show  
2 versus some other method?

3 A There is no way to know that.

4 Q So for any given order that was input, you  
5 have no way of knowing whether the salesperson typed  
6 information on the same day of receipt -- of  
7 receiving the order or some time later; correct?

8 A I don't know that. But as I said earlier,  
9 generally it is done on the same day.

10 Q Earlier in the deposition you also  
11 testified that from the warehouse side when someone  
12 would package sunglasses to be shipped they would go  
13 to the computer and type in certain information to  
14 the SBT system; is that right?

15 A Can you ask the question again, or can you  
16 separate it into two questions?

17 Q I believe that you earlier testified in  
18 the deposition that when a person in the warehouse  
19 packed sunglasses to be shipped they typed in  
20 certain data to the SBT system; is that right?

21 A Yes.

22 Q Can you tell me exactly what data someone  
23 in the warehouse typed in related to a shipment of  
24 sunglasses going out?

25 MR. WILTON: Objection. Asked and answered.

1 THE WITNESS: The shipping fees.

2 BY MR. LERNER:

3 Q The shipping fees? Anything else?

4 A And then it will tell the computer that it  
5 is completed, and then the invoice will be printed.

6 MR. LERNER: Can you read back the answer?

7 (The record was read.)

8 BY MR. LERNER:

9 Q When you say, "It will tell the computer  
10 it was completed," what do you mean by "it"?

11 A Well, when the worker gathers all the  
12 merchandise, then it is completed.

13 Q So is it the worker that tells the  
14 computer that the shipment is completed?

15 A If a customer ordered 10 items, if there  
16 were only nine items that is able to be shipped out,  
17 and if there is one that is missing, or perhaps  
18 maybe a customer might have ordered 10 dozen and  
19 only had five dozen, so then they would take the  
20 order back to the salesperson to make a correction  
21 or an adjustment. So when they type in the shipping  
22 fees, then the computer asks, "Is this shipment  
23 complete," then they would hit, "Yes."

24 And then the computer would ask, "Do you  
25 want to print an invoice," and then they would hit,

1 "Yes."

2 Q So there is a separate step for printing  
3 an invoice after the worker indicated that the  
4 shipment was complete; correct?

5 A Yes.

6 Q And when was that extra step taken by the  
7 warehouse worker?

8 A After the packing is completed, then they  
9 do it.

10 Q So is that the same day after the packing  
11 is completed?

12 A Yes.

13 Q Always?

14 A Unless perhaps if it was not shipped out  
15 that day, perhaps maybe it was at 4:00, UPS had  
16 already come and gone, and then they had to wait for  
17 the next day for it to ship out.

18 Q I believe you testified earlier that three  
19 copies of any given invoice to customers were  
20 printed; is that right?

21 A Yes.

22 Q A copy for the customer?

23 A Yes.

24 Q A copy for accounting?

25 A Yes.

1 Q And a copy for the salesperson; correct?

2 A Yes.

3 Q I'll show you what was marked as  
4 Exhibit 134. And I believe you testified earlier  
5 that this was -- this page 2 was data printed by the  
6 computer consultant at your request; is that  
7 correct?

8 A Yes.

9 Q And it reflects sales history for item  
10 No. 252A in 1993; correct?

11 A Yes.

12 Q And I believe you testified following --  
13 after the consultant printed this page of  
14 Exhibit 134 you attempted to find -- strike that.

15 After the computer consultant printed what  
16 is page 2 of Exhibit 134, did you make an effort to  
17 find physical copies of the invoices listed on this  
18 document?

19 A What do you mean?

20 Q Well, I think you testified earlier that  
21 you first indicated to the computer consultant that  
22 you wanted to see sales history for a particular  
23 model of glasses for a particular year, and in  
24 response the computer consultant printed, for  
25 example, page 2 of Exhibit 134, to reflect the sales

1 of item No. 252A for 1993; correct?

2 A Yes.

3 Q And the information regarding sales  
4 history that was printed includes, for that item in  
5 1993 in the second column, certain invoice numbers;  
6 correct?

7 A Yes.

8 Q So after the computer consultant printed  
9 this page JAY-Y00271, did you attempt to find  
10 physical copies of the invoice numbers that are  
11 listed on this page?

12 MR. WILTON: Objection. I'm going to object  
13 that it is vague. I want to make sure she knows  
14 what "physical copy" means.

15 I know what it means, you know what it  
16 means. I want to make sure she has in her mind that  
17 she knows what it means.

18 BY MR. LERNER:

19 Q By "physical copy" I mean one of those  
20 copies that you testified a moment ago that was  
21 printed out by the warehouse worker and either given  
22 to a salesperson or the Accounting Department.

23 A Because in 1993, whatever year, we have a  
24 lot of those original copies, so we didn't keep  
25 those originals for very long; otherwise, it would



1 take up a lot of space, but in the computer data,  
2 this information was still in there. And so we  
3 would let the computer print it out.

4 Q But I think you testified perhaps not as  
5 to 1993, but as to other years where a similar  
6 procedure was followed and that are represented by  
7 the other exhibits, for example, 140, 142, 145, you  
8 know, the various exhibits that show sales history  
9 reports that were previously marked, is it accurate  
10 to say that some of the physical invoices, as we  
11 described them, for later years might still be  
12 maintained by Jay-Y?

13 MR. WILTON: Objection. Compound and vague and  
14 ambiguous.

15 BY MR. LERNER:

16 Q See if I can break it up.

17 A Do I need to respond to that now?

18 MR. WILTON: No.

19 BY MR. LERNER:

20 Q No.

21 So Exhibit 134 was a sales history for  
22 item 252A for 1993?

23 A Yes.

24 Q You asked the computer consultant to print  
25 similar sales history reports for subsequent years

1 for other item numbers; correct?

2 A Can you repeat?

3 Q Just do it this way: Exhibit 137 is a  
4 similar printout by the computer consultant of sales  
5 histories for item numbers that you requested he  
6 search and print data for; correct?

7 A Correct.

8 Q And that same process of printing date for  
9 sales history of given item numbers was followed for  
10 1995, 1996, 1997 and 1998; correct?

11 A Correct.

12 Q Okay. So for example, the invoice numbers  
13 that are shown in Exhibit 166, which is part of the  
14 sales history report for 1998, do you see those  
15 invoice numbers?

16 A Yes.

17 Q Is it possible that some of the invoices  
18 from this year represented by these invoice numbers  
19 were still physically kept in the Jay-Y warehouse  
20 somewhere?

21 MR. WILTON: Objection. Calls for speculation.  
22 BY MR. LERNER:

23 Q Put it this way, did you check to see if  
24 any of the invoices shown in Exhibit 166 were still  
25 maintained anywhere in the Jay-Y warehouse?

1           A     No, I didn't go and check.

2           Q     Did anybody?

3           A     No, because I didn't know that was  
4 necessary.

5           Q     I'll show you Exhibit 135. Am I correct  
6 that these are printouts from the SBT computer  
7 system?

8           A     Yes.

9           Q     And these were generated at your request  
10 by the computer consultant; correct?

11          A     The consultant generated that report,  
12 sales report, and then we took those numbers, and we  
13 printed this out.

14          Q     Okay. So you're referring to Exhibit 134  
15 and that exhibit listed four invoice numbers;  
16 correct?

17          A     Yes.

18          Q     And then Jay-Y, using the invoice numbers  
19 in 134, asked the SBT system to generate those four  
20 invoices; correct?

21          A     Yes.

22          Q     And that is what is collected in  
23 Exhibit 135; correct?

24          A     Yes.

25          Q     And I believe you testified earlier that

1 the information that is reflected in the invoices on  
2 135 were from data input from the SBT system;  
3 correct?

4 A Yes.

5 Q Looking at this invoice, do you have any  
6 way of telling what source the order for these  
7 glasses came from? In other words, do you know  
8 whether it was from a trade show order or direct to  
9 a salesperson at Jay-Y?

10 A There is no way to know.

11 Can I take a break to go to the ladies  
12 room?

13 (A recess was taken from  
14 10:51 a.m. to 11:06 a.m.)

15 BY MR. LERNER:

16 Q Ms. Chen, between 1993 and 1998 not all  
17 sales of Jay-Y sunglasses were domestic, were they?

18 A Can you repeat the question?

19 (The record was read.)

20 THE WITNESS: Correct.

21 BY MR. LERNER:

22 Q You had customers in Canada?

23 A Yes.

24 Q And customers in Argentina?

25 A Perhaps. I don't really remember, but if

1       there were, there weren't very many.

2               Q       Show you what has been marked as  
3       Exhibit 138.  Particularly draw your attention to  
4       the Bates No. JAY-Y00347.

5                       Does that refresh your recollection as to  
6       whether sales were made of Jay-Y glasses to a  
7       customer in Argentina?

8               A       Yes, that is what it shows on this record.

9               Q       What about Turkey, did Jay-Y sell to any  
10       customers in Turkey during that time period?

11              A       I remember that we had one customer from  
12       Turkey, but I don't remember when we sold it to  
13       them.

14              Q       Any other countries that you can recall  
15       besides Turkey, Argentina and Canada where Jay-Y  
16       sold glasses between 1993 and 1998?

17              A       Perhaps to Mexico, but I don't really  
18       remember.

19              Q       Again, showing you Exhibit 138, and  
20       particularly page with the Bates marked JAY-Y00284.

21                       Is that a copy of an invoice that Jay-Y  
22       generated from the SBT system, based on the sales  
23       history report created -- printed by the computer  
24       consultant?

25              A       Yes.

1           Q     And do you see the "Bill To" and "Ship To"  
2     names on this document?

3           A     Yes.

4           Q                   **REDACTED**

5

6           A                   **REDACTED**

7           Q                   **REDACTED**

8

9           A                   **REDACTED**

10          Q                   **REDACTED**

11

12

13

14          A                   **REDACTED**

15

16

17          Q                   **REDACTED**

18

19          A                   **REDACTED**

20          Q                   **REDACTED**

21

22

23

24

25          A     Correct.

1 Q Turning to JAY-Y00347.

2

3

4

5

A

**REDACTED**

6

Q

**REDACTED**

7

8

9

10

A Yes.

11

Q And is that true, does the customer code

12

remain consistent throughout the period 1993 to

13

1998?

14

A My guess is that it would be the same, but

15

sometimes maybe the salesperson during the process

16

might have changed it, so that could happen. Maybe

17

two numbers were too close together. Perhaps maybe

18

a customer might have used one name, and then

19

changed to another name, so they might have kept the

20

same customer number, or they might have changed it

21

to a new customer number.

22

Q

**REDACTED**

23

24

**REDACTED**

25

A

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Q REDACTED

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REDACTED

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A

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Q

REDACTED

"

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REDACTED

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A

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Q

REDACTED

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23

A

Yes.

24

Q

REDACTED

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**REDACTED**

A

**REDACTED**

Q

A Yes.

Q Still looking at 146, the same page,  
JAY-Y00886, there are many different model numbers  
set forth in this invoice; correct?

A Yes.

Q Not all of these model numbers are models  
of sunglasses that featured the "DG" on them;  
correct?

A Yes.

Q Now look at the first page of Exhibit 146,  
which is stamped JAY-Y00847. Do you see there  
appears to be some sort of a white line running down  
the model numbers on that page.

A Yes.

Q Do you know how that white line got there?

A Can't be sure, but I'm guessing that it is  
because we're printing so much that the printer was

1 not doing well.

2 Q So you believe that that white line was  
3 there when you printed this document out of the SBT  
4 computer system; correct?

5 A I'm guessing that it was.

6 Q And in the second invoice that appears in  
7 Exhibit 146, which starts with the Bates No.  
8 JAY-Y00849, do you see a similar white line down the  
9 invoice?

10 A It's the same thing, I'm guessing, but I  
11 could copy down this number, we can go back and  
12 reprint it and see if it could be a complete record,  
13 a clean record.

14 Q Do you also note on JAY-Y00849 that under  
15 the "Bill To" and "Ship To" it says, "Invalid  
16 customer number"?

17 A That I don't know. That's how it was  
18 printed from the computer.

19 Q Do you know if that is how it was printed  
20 from the computer when this invoice No. 960903 was  
21 originally printed from the SBT system by the  
22 warehouse?

23 A I am very sure that the original would not  
24 be like this because this way doesn't make sense  
25 because we know longer have this customer, or maybe,

1       you know, what went wrong within the computer, that  
2       I am not sure.

3           Q       Looking at some other invoices in  
4       Exhibit 146, invoice No. 960929 and invoice 960936,  
5       do you see there are white lines in those documents  
6       as well?

7           A       Yes.

8           Q       Is your sense again the same, that those  
9       white lines came up when you were printing?

10          A       That's what I'm guessing. If you want me  
11       to, I can write down all of these numbers, and I can  
12       reprint these.

13          Q                   **REDACTED**

14  
15  
16  
17          A       Yes.

18          Q       Is that how the address information  
19       appeared when the warehouse originally printed out  
20       this invoice from the SBT system upon shipping this  
21       order?

22          A       At that time our original would definitely  
23       not be like this, but because when we printed this  
24       out it was in 2009, so there may be possibility  
25       because this customer was no longer active, so it is

1 on the computer, and so that is how the computer  
2 printed it out when we printed this in 2009.

3 Q You said it may be a possibility?

4 A Yes.

5 Q Do you have any way of being certain?

6 A I can only try to look to see if the  
7 original still exists and to try to find the  
8 original.

9 Q Prior to today have you attempted to find  
10 an original of this invoice?

11 A No. Because we felt that whatever was  
12 printed on the computer was this.

13 Does he want to give me those several  
14 invoice numbers?

15 (A discussion was held off the record.)

16 THE INTERPRETER: Counsel, the witness wants to  
17 know do you want to give her those numbers so she  
18 can go and print out a cleaner copy for you?

19 MR. LERNER: Not at the moment.

20 Q

21 **REDACTED**

22

23

24

25

1           A     Well, because they are like in the same  
2     business we are in. They are our competitor.  
3     Perhaps they may ask a smaller customer of theirs to  
4     purchase products from us, perhaps like maybe a  
5     dozen each or something, and then we found out. So  
6     then we would make an indication there that future  
7     years we would not send a catalog to them.

8           Q     So the indication "No catalog," is that  
9     something that appeared on the invoice that was  
10    printed from the SBT system at the time this order  
11    was shipped?

12          A     Of course not. It's the same problem as  
13    the ones earlier. This is, again, perhaps it was  
14    printed in 2009, so this would be the heading.  
15    That's what was printed.

16          Q     And is this also true of the notation,  
17    "Feb. 25, '00, Check their file" that appears in  
18    invoice No. 960735, which is marked with Bates stamp  
19    JAY-Y00784?

20          A     Yes, I think --

21          MR. WILTON: My objection is to is what the  
22    same? You started out with, "Is it the same with."

23          MR. LERNER: Is the problem the same.

24          MR. WILTON: Oh, okay.

25          THE WITNESS: Well, because the original would

1 not look like this. These problems arise because  
2 this is printed in 2009.

3 Is that the bottom or the middle?

4 BY MR. LERNER:

5 Q They go in order. Right, they are in  
6 order.

7

8

9 **REDACTED**

10 A

11 Q **REDACTED**

12

13 A **REDACTED**

14 Q **REDACTED**

15

16

17

18

19 A Yes.

20 Q Do you know what percentage of Jay-Y's  
21 overall sales from is '93 to 1998 were to foreign  
22 entities?

23 A Overseas, very few. But there is no way  
24 for me to know.

25 Q Looking at invoice No. 962654 with the

1 Bates beginning JAY-Y00597, again in the address  
2 area under "Bill To" and "Ship To," do you see that  
3 there is an indication, "No more business"?

4 A This perhaps might be some years prior to  
5 2009 this company was no longer in business.  
6 Perhaps this was inputted with the customer's  
7 information, so when we printed this out in 2009  
8 that is how it was printed, but in 1996 the original  
9 would not be like this.

10 Q Also true of invoice 962778, which is  
11 Bates stamped JAY-Y00607, that the original would  
12 not match what is listed in the "Ship To" and "Bill  
13 To" areas?

14 A Correct. Not all the information in the  
15 bottom are the same. It is only that information on  
16 the top because we had made those changes.

17 Q And is that -- to your knowledge, would  
18 that be true for any invoice that shows some  
19 inactive or other code within the address?

20 A Correct.

21 Q I'll show you what has been marked as  
22 Exhibit 131. Turn you to the second page of that  
23 exhibit with the Bates JAY-Y00500, and am I correct  
24 that this was printed by the computer consultant, at  
25 your request, to reflect Jay-Y's purchase history

1 for the item numbers shown in the "Item No." column  
2 in 1996?

3 A Yes.

4 Q Reading across the first line, do you see  
5 there is a column header "P/O No."? What does that  
6 refer to?

7 A Purchase order number.

8 Q And the vendor number?

9 A Yes.

10 Q **REDACTED**

11

12 A Yes.

13 Q And if I recall, earlier in the deposition  
14 you indicated that the backup for the data that is  
15 the -- that populates Exhibit 131 is found in  
16 Exhibit 132; is that correct?

17 A Yes.

18 Q So if we look at the first line there is  
19 an invoice date of March 16, 1996 and a shipment  
20 identification number 96-25. And does that indicate  
21 that the first couple of pages of Exhibit 132 is the  
22 backup for the data in that first line?

23 A Yes.

24 Q **REDACTED**

25



**REDACTED**

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A Yes.

Q I note that the purchase order No. 960030 doesn't match the reference number on the invoice; is that correct?

A Yes. This is our internal number when we made the order. And this is the number from the vendor when they ship their merchandise.

Q Did you produce the purchase order numbers that are listed in Exhibit 131?

MR. WILTON: Objection. Vague and ambiguous as to the word "produce." I think I know what you mean, but I am not sure that that --

BY MR. LERNER:

Q Let me back up. Scratch that.

Did you look for the purchase order numbers that are identified in Exhibit 131?

A I didn't.

Q Do you know if anybody at Jay-Y did?

A Like I had explained earlier, each time we place an order we would have this number. Because this PO is very long, so when we receive it, we receive it by using the item numbers.

1           Because I felt that this would be the  
2 supporting documents or the evidence, that's why I  
3 produced these.

4           But if you want these POs, I would have to  
5 ask my computer consultant to see if he could print  
6 out each of those PO numbers. Because after the  
7 shipment is received, then the POs would be closed,  
8 so I don't know whether or not we still would be  
9 able to print that out or not.

10          Q     Turning to the next page of Exhibit 131,  
11 which is Bates JAY-Y00501, do you see in the third  
12 row after the heading in the last two columns there  
13 is an indication, "Missing shipping documents"?

14          A     Yes.

15          Q     What does that reflect?

16          A     That I couldn't find them. I couldn't  
17 find those supporting, the shipping invoice.

18          Q     So you weren't able to confirm that the  
19 data in that row matched the invoices you received  
20 from the vendor; correct?

21          A     Well, this information that is inside the  
22 computer, these data, they are all correct, it is  
23 just that I could not find this information. That's  
24 it.

25          Q     How do you know they are all correct?

1           A     Well, because all the information was kept  
2     in the computer.

3           Q     How did it get into the computer?

4           A     When the shipment was received, then it  
5     would be inputted, like I had talked about last  
6     time. And once it is inputted there is no way to  
7     change it.

8           Q     So if somebody inverted two numbers by  
9     mistake when inputting data from a shipment, there  
10    would be no way to change that?

11          A     Well, after you receive it and then you  
12    input it in, and they would ask you, "Is everything  
13    correct," and then if you say "Yes," then it would  
14    be kept in the computer, and then you cannot change  
15    it anymore.

16          Q     So if somebody thought everything was  
17    input correctly and typed in "Yes," in response to  
18    that question, there would be no way to change that  
19    information in the computer?

20          A     Then you must do an adjustment, and you  
21    would have to take the accurate information and then  
22    you would have to re-input it, and then the  
23    incorrect input would have to be credited out. So  
24    that adjustment or the addition and the credit and  
25    information would also be shown in the computer, and

1 that also could not be changed.

2 Q Did the consultant who printed Exhibit 131  
3 print any purchase History reports that contained  
4 credit adjustments?

5 A No.

6 Q Was he asked to look for credit  
7 adjustments related to these model numbers that are  
8 identified in Exhibit 113 and the other purchase  
9 history reports?

10 A Well, I don't really understand this  
11 completely, but I'm guessing that if there were  
12 those adjustments or credits it would automatically  
13 also be printed out on this, so it would already be  
14 indicated on this report.

15 MR. LERNER: Your witness, Ken.

16 (A luncheon recess was  
17 taken at 11:49 a.m. to be  
18 resumed at 1:00 p.m.)

19 (The deposition was resumed  
20 at 1:17 p.m., the same  
21 persons being present.)

22 ///

23 ///

24 ///

25 ///

REDIRECT EXAMINATION

BY MR. WILTON:

Q Good afternoon, Ms. Chen.

A Good afternoon.

Q During the last session of your deposition Mr. Lerner asked you some questions regarding the catalogs that Jay-Y uses, and I am going to ask you some questions about how those catalogs play a role in Jay-Y sales.

A Okay.

Q When did Jay-Y first start creating catalogs?

A I don't really remember. Perhaps it was around 1980 something.

Q And how did your customers get a copy of the catalog?

A The first way is that we would mail it to them, and then the second way was that they picked them up at the shows.

Q In the period from 1993 to 1998 were most of the catalogs mailed or picked up at shows?

MR. LERNER: Objection.

MR. WILTON: Grounds?

MR. LERNER: Foundation.

///

1 BY MR. WILTON:

2 Q You can answer the question.

3 A It is pretty difficult for me to  
4 differentiate that, but every year at the beginning  
5 of the year, any of the customers who had purchased  
6 from us, we would mail a catalog to them. Meaning,  
7 if these customers were in our computer system, then  
8 we'd mail them each a catalog, and then the rest  
9 would be picked up when they attended shows.

10 Q This morning we looked at an invoice that  
11 said no "No catalog" on the address.

12 Do you recall that?

13 A Yes.

14 Q Was that a notation that that customer  
15 would not receive a catalog at the beginning of the  
16 year?

17 A Well, actually on that invoice when they  
18 had purchased it we had given them a catalog because  
19 they had purchased from us, but it was later on that  
20 we had discovered that they were competitors.

21 So at a certain location in the computer  
22 then we made the notation to no longer send them any  
23 future catalogs.

24 Q So was there part of the SBT system that  
25 included a place where you could mark whether or not

1 a customer received a catalog?

2 A There is no specific location. It is just  
3 within the customer reference in there. That's why,  
4 when we printed these invoices, that is why there  
5 was this problem of it printing out that way.

6 Q And I believe in your testimony last time  
7 you talked about using the catalogs as a means of  
8 communication.

9 Do you recall that testimony?

10 MR. LERNER: Objection.

11 THE WITNESS: Yes, I remember.

12 BY MR. WILTON:

13 Q What did you mean by "communication"?

14 A Well, that is to say that when a customer  
15 wants to place an order we could use the catalog to  
16 communicate as to which product they wanted to  
17 purchase. They may say, "Oh, could you recommend  
18 six models that sell well for the female frames."  
19 And so then we would then suggest those different  
20 types of frames for them, and to see if they like  
21 those or not. So we use those catalogs as a method  
22 of communicating.

23 For example, some may want to buy a 202,  
24 and then we would no longer have that anymore. Then  
25 we can say, "Well, 242 and 202 are quite similar.

1 Would you like to replace that with this one?"

2 Q In the period, from 1993 to 1998, your  
3 customers could order sunglasses at trade shows; is  
4 that right?

5 A Yes.

6 Q And they could order over the phone?

7 A Yes.

8 Q And could they order over a website?

9 A At that time I don't think we had a  
10 website yet.

11 Q And when a customer ordered during that  
12 period of time, from 1993 to 1998, could they pay  
13 for their order by cash?

14 A They were, yes.

15 Q Could they pay for an order by credit  
16 card?

17 A Well, we have a credit card machine now,  
18 but I don't remember when we started using that.

19 Q Do you know whether it was before the year  
20 2000 that you started using a credit card machine?

21 A That I don't really remember. Maybe the  
22 accountant or maybe Ward would remember better.

23 Q During the period from 1993 to 1998 could  
24 customers of Jay-Y purchase on credit?

25 A Yes, there was also that.



1           Q     And how did you decide which customers can  
2     purchase on credit?

3           A     Well, generally we would ask the customer  
4     to provide us with one bank and three trade  
5     references, and if we felt that their bank records  
6     were very strong and three companies who did  
7     business with them also gave them credit, then we  
8     would call these three companies and ask them if  
9     they had a good payment history.

10           And then if we decided that they were a  
11     pretty good risk, we would give them a certain  
12     amount of money that we would allow them to have  
13     credit for.

14           Q     And did you speak with the customers in  
15     order to get trade references, or did you  
16     communicate in some other fashion?

17           A     We would fax them a credit application  
18     form for them to fill out, and then they would fax  
19     it back, and then the accountant would go and check  
20     out this information.

21           Q     In the period from 1993 to 1998, was it  
22     possible for a customer to order product without  
23     speaking with somebody at Jay-Y?

24           A     I can't think of that possibility, unless  
25     that was an original customer who had already

1 purchased from us, and then this person might be too  
2 busy and didn't have time to talk, and then they may  
3 just fax an order over.

4 Q When you say an "original customer," what  
5 do you mean by that?

6 A Meaning an existing customer who had  
7 already purchased from us.

8 Q And you testified a little bit regarding  
9 the use of the catalogs, and I'd like to show you  
10 one and talk about that for a minute. I'd like to  
11 show you Exhibit 174.

12 Do you recognize that?

13 A Yes.

14 Q What is it?

15 A It is a catalog that we used in 1995.

16 Q Then you talked about a communication or  
17 gave an example of speaking to customers regarding  
18 models that sold well.

19 Can you describe what you meant by that.

20 A For example, a customer may call on the  
21 phone, and they would say, "On this page 1 or 2,  
22 these metal frame glasses, could you make some  
23 recommendations as to which ones sells well," and I  
24 would choose maybe 6331 or maybe TM-1310, and I may  
25 say, "These sells a little bit more," and "Do you

1       like them? Would that fit your use?"

2                   And if there were anything that were  
3       special, I would tell them, "This corner is kind of  
4       special" --

5           Q       Let me stop you for a second. What do you  
6       mean by "special"?

7           A       For example, the normal corners, they are  
8       just kind of straight, and in the early stages there  
9       wasn't a whole lot of changes.

10          Q       Did that change at some point?

11          A       As the years passed there were more and  
12       more variety.

13          Q       Variety of what?

14          A       Well, like maybe in the beginning it is  
15       quite traditional, and little by little there is  
16       just more and more different styles. Perhaps maybe  
17       the parts are different, maybe the shape is  
18       different, and maybe in the past it might be just a  
19       very simple regular lens, and then later on they  
20       have those driving lenses, and then they had colored  
21       mirror lenses, and then some colored lenses, like  
22       pink lenses or blue lenses.

23                   So these are the things that we would tell  
24       the customers over the phone.

25          Q       During those conversations were you trying

1 to convince a customer to try styles that they had  
2 not tried before?

3 A Of course. You know, a good salesperson  
4 would try their best to sell as much as they can.

5 Q And during those conversations did you  
6 describe to customers whether or not there was a  
7 logo on the sunglasses?

8 A Of course.

9 Q Why?

10 A Because we really wanted to go that route.  
11 So we felt that that was very important, and hoping  
12 that this route we were taking would be the correct  
13 route. So we would try to encourage our customers  
14 to buy these products.

15 Q And what route are you referring to?

16 A Well, meaning the route we want to start  
17 building our own brand.

18 Q And did you consider the use of the "DG"  
19 logo as part of your effort to build your own brand?

20 A Yes.

21 Q And did you disclose to customers during  
22 these conversations that you were using a "DG" logo  
23 on sunglasses?

24 A Of course. To me, that was very  
25 important.

1           Q     And did customers take your  
2 recommendations to your sunglasses that had the "DG"  
3 logo?

4           A     Of course there were some that were  
5 willing to try them out, and there were some that  
6 weren't willing to.

7           Q     With regard to those that were willing to  
8 try them out -- actually, I started speaking and  
9 never should have started.

10                  You also mentioned using the catalogs in  
11 the situation where Jay-Y was out of a particular  
12 model. Could you describe that kind of  
13 conversation.

14           A     For example, if a customer calls and says,  
15 "I would like to have NK-6403, and I want to order  
16 five dozen," and I may tell them, "I just search on  
17 the computer, and right now we don't have that  
18 particular product."

19                  Because I didn't really want to lose that  
20 business, so I would tell them, "6402, even though  
21 there is a slight difference, but it is a still a  
22 very good seller. Would you be willing to try that,  
23 maybe try one or two dozen?"

24           Q     And how did the catalog help you in that  
25 conversation?

1           A     Like I said earlier, if there were no  
2 catalogs, there is really no way for me to describe  
3 it to them to, communicate that to them.

4           Q     Earlier this morning you had some  
5 discussion with Mr. Lerner regarding the model  
6 numbers that appear on the sunglasses that we have  
7 marked as Exhibits 100 through 130.

8                     Do you recall some of that conversation?

9           A     You talking about the conversation where  
10 the number -- where I didn't write down "CM" or like  
11 those types of lenses?

12          Q     Yes.

13          A     I remember.

14                     (A discussion was held off the record.)

15 BY MR. WILTON:

16          Q     I believe you described what a "CM" was.  
17 What is a "CM"?

18          A     Colored mirror lenses.

19          Q     And were there other types of lenses that  
20 Jay-Y offered for its sunglasses?

21          A     There are regular lenses, super dark  
22 lenses and tinted lenses. The tinted lenses are the  
23 ones that may be pink or blue or things like that.  
24 And there are driving lenses. And there is flash  
25 mirror or mirror lenses. The mirror lenses are a

1 thicker mirror. And the flash mirror lenses are  
2 more flush. They are thinner.

3 Q A regular lens, was there a notation that  
4 was used by Jay-Y to denote a regular lens?

5 A "R."

6 Q Was there a notation used by Jay-Y to  
7 denote a flash mirror lens?

8 A "FM."

9 Q Was there a notation used by Jay-Y to  
10 denote a mirror lens?

11 A "M."

12 Q Was there a notation used by Jay-Y to  
13 denote a super dark lens?

14 A "SD."

15 Q Was there a notation used by Jay-Y to  
16 denote a driving lens?

17 A "FDV."

18 Q What is a driving lens?

19 A There is kind of like a dark brown colored  
20 lens that when you drive it is easier on your eyes.  
21 When you drive it is about that color (Indicating),  
22 and it would block some of the ultraviolet rays.

23 Q May I ask what you were pointing to when  
24 you said, "It is that color"?

25 A The wood color.

1 Q So it is a brownish color?

2 A Yes.

3 MR. WILTON: May the record reflect that the  
4 witness is pointing to the brown cabinetry.

5 THE WITNESS: Not this brown, but that brown  
6 (Indicating).

7 BY MR. WILTON:

8 Q I'd like to show you what we have marked  
9 as Exhibit 102. Is that a model of sunglass offered  
10 by Jay-Y at some point in time?

11 A Yes.

12 Q Is the model number for that particular  
13 model 1025A/R?

14 A Yes.

15 Q Does the "R" designate this particular  
16 pair of sunglasses has a regular lens?

17 A Yes.

18 Q If this pair of sunglasses had a mirror  
19 lens, how would the model number be designated?

20 A 125A/M.

21 Q In the manufacturing process does it  
22 matter what kind of lens is in the sunglass as it is  
23 being manufactured?

24 MR. LERNER: Objection.

25 ///



1 BY MR. WILTON:

2 Q Let me rephrase the question.

3 If Jay-Y ordered five sunglasses in this  
4 model 1025A with a regular lens, and five pairs of  
5 sunglasses of the same model with a mirror lens,  
6 would the manufacturing process be different for  
7 those two different sets of sunglasses?

8 MR. LERNER: Objection.

9 THE WITNESS: Well, the manufacturing process  
10 for the glasses is the same. It is just that the  
11 placement of the lenses are different.

12 BY MR. WILTON:

13 Q How do you know that?

14 A Well, this is the process. Because for  
15 the lenses you can order the lenses that you want.

16 Q What do you mean by, "You can order the  
17 lenses that you want"?

18 A That is to say, for example, this model  
19 here, you could order it with a regular lens, or you  
20 could also order it with FM or an M.

21 Q And if it is ordered with two different  
22 types of lenses, is the number that appears on the  
23 temple of the sunglass any different?

24 A Sometimes they would be the same, and  
25 sometimes if we remember, then we would tell the

1 manufacturer to say -- if we had ordered ones with  
2 certain types of lens, to have that type of lens  
3 also printed on there, to have it be more complete.  
4 And then at that time it would be printed  
5 differently.

6 And then when it comes, it would say in  
7 the box the style number, and then it would tell you  
8 what type of lens it is.

9 Q Did you say "in the box"?

10 A Right. Because we sell it by the dozen.  
11 So each box has -- each box holds a dozen, and so  
12 there is a label on it.

13 Q On the box?

14 A Yes.

15 Q But is the number on the temple of the  
16 sunglass any different?

17 A Well, the model number will be the same  
18 because it is exactly the same model number. The  
19 additional thing that they would show would be the  
20 type of lenses.

21 Q Would that be shown on the sunglass  
22 itself, looking at Exhibit 102, or would it be shown  
23 on the box in which the glasses were shipped?

24 A On the box.

25 Q I would like to show you Exhibit 131 which

1       you looked at this morning. And I'd like you to  
2       focus on the ninth line --

3           A     Okay.

4           Q     -- where it says "NK-6341/CM."

5                 Do you see that?

6           A     Yes.

7           Q     Does the type of lens always appear after  
8       the slash and the model number?

9           MR. LERNER: Objection.

10          THE WITNESS: Most -- generally, yes.

11       BY MR. WILTON:

12          Q     Is it sometimes separated by a dash  
13       instead of a slash?

14          MR. LERNER: Objection.

15          THE WITNESS: It is definitely written this  
16       way, but sometimes if there was nothing specific we  
17       wouldn't make written notation.

18       BY MR. WILTON:

19          Q     I am not sure I understand. What do you  
20       mean by that?

21          A     This one here, sometimes, if you want to  
22       more completely describe this, then we will choose  
23       to use that -- to use that as a model number. But  
24       sometimes it could be possible that we will just use  
25       NK-6341, and just use that as the model number and

1       there wouldn't be a "/CM." But in the box that  
2       holds a dozen, on that box on the lens it will still  
3       say "CM."

4           Q     If there was no notation such as "/CM,"  
5       does that provide any indication as to what kind of  
6       lens is in the sunglass?

7           A     Generally over 90 percent it would be  
8       regular lenses.

9           Q     When a shipment was received or when a  
10      shipment is received by Jay-Y, it is up to the  
11      warehouse person to input the model numbers that  
12      were received into the SBT system; is that right?

13           MR. LERNER: Objection.

14           THE WITNESS: Can you repeat who would type it  
15      in?

16      BY MR. WILTON:

17           Q     I'll ask you: Who would type it in, when  
18      a shipment was received?

19           MR. LERNER: Objection.

20           THE WITNESS: The accountant.

21      BY MR. WILTON:

22           Q     The accountant --

23           A     You mean received the shipment --

24           Q     Strike that. Let me lay the foundation.

25                 When a shipment is received -- or was

1 received by Jay-Y during the period from 1993 to  
2 1998, somebody was responsible for determining what  
3 sunglasses were received by Jay-Y; is that right?

4 A Yes.

5 Q Who was that, or what was their position?

6 A The accountant does the receiving work.

7 Q And was the accountant then responsible  
8 for typing in the model numbers that were received?

9 A Correct.

10 Q And in this particular situation was the  
11 accountant the individual who typed in the  
12 "NK-6341/CM"?

13 A Yes.

14 Q And why would the accountant include the  
15 "/CM" when typing in what was received by Jay-Y?

16 A Well, this/CM is when the order was  
17 placed, that I input it because I created the style  
18 number. When she received product, she would just  
19 call that number out from the computer data. It is  
20 from the purchase order where she would call that  
21 number out.

22 Q Let's go back to purchase orders because  
23 this morning we had some discussion of those.

24 A Okay.

25 Q During the period from 1993 to 1998, who

1 was responsible at Jay-Y to order product?

2 A My responsibility.

3 Q And how did you order product for Jay-Y?

4 A I would go to the factory to look, and  
5 they would show me, and then the styles that I think  
6 I could sell, then I would place an order. And when  
7 I didn't go to the factories, then they would send  
8 me samples.

9 Q I think my question was less broad than  
10 the answer.

11 If sometime during the year Jay-Y needed  
12 to order more product to ship to customers, how  
13 would Jay-Y communicate to the factory that it  
14 needed to order product?

15 A I just write a fax, and I fax it to them.

16 Q And what would be on that fax?

17 A I would tell them which model number I  
18 wanted to order and tell them the quantity that I  
19 would like to order, and then also in this dozen,  
20 what kind of colors I would want.

21 Q What do you mean by "what kind of colors"?

22 A For example, if there is plastic I may  
23 want six black ones and two red ones and four like a  
24 tortoise color.

25 Q And would you put that information on one

1 sheet that was faxed to the factory?

2 A Yes.

3 Q Did you ever take the information from  
4 that fax and put it in the computer?

5 A I would type in the style number and the  
6 quantity and then type in the price that they were  
7 selling to me for.

8 Q Did you also type in which factory you  
9 ordered it from?

10 A If I input it, yes.

11 Q Did other individuals input the data?

12 A No.

13 Q And after the order was faxed to the  
14 factory, what happened to the facsimile, from  
15 Jay-Y's perspective, not the factory's perspective?

16 A You talking about that piece of paper?

17 Q Yes, the piece of paper.

18 A Generally after receiving the shipment and  
19 after it is paid, then maybe three months, six  
20 months I would no longer need to keep it.

21 Q So when you -- okay. So would Jay-Y  
22 discard the page that was faxed to the factory?

23 A Right. Because for me, I had already  
24 received the shipment, and I had already made the  
25 payment to them.

1 Q Did Jay-Y ever keep files of purchase  
2 orders?

3 A We would keep it for about a half a year.

4 Q If we look at Exhibit 131 there is a  
5 column with the "Purchase Order No."

6 Do you see that?

7 A Yes.

8 Q Do you know whether or not it is possible  
9 to -- strike that.

10 Did Jay-Y ever print purchase orders from  
11 its SBT system?

12 A No. Like I had said before, because when  
13 we received the merchandise it is by item, so we --  
14 so printing the purchase order would serve no  
15 purpose for us. But this information, they are all  
16 within the computer system.

17 Q So did Jay-Y keep files in accordance with  
18 the shipments it received?

19 MR. LERNER: Objection.

20 THE WITNESS: Yes, our shipment information,  
21 that is all kept, as well as our purchase  
22 information, we have those.

23 BY MR. WILTON:

24 Q Are you pointing to Exhibit 132 when you  
25 are saying that?



1 A Yes, yes.

2 Q So looking at Exhibit 132, at the top  
3 there is a notation that says "96-25."

4 Do you see that?

5 A Yes.

6 Q Is there a physical file at Jay-Y that  
7 says "1996 shipment 25"?

8 A Yes.

9 Q And what is in that file? What types of  
10 documents are in that file?

11 MR. LERNER: Objection.

12 THE WITNESS: There is the bill of lading.  
13 There is the invoice for the shipment and perhaps a  
14 packing list and perhaps the list from the Customs  
15 broker, and perhaps the bill from the trucking  
16 delivery company, and all of this would be done by  
17 our accountant.

18 BY MR. WILTON:

19 Q All of what would be done by our  
20 accountant?

21 A This file. One shipment, there is one  
22 file, and there is this number. The last time when  
23 the attorney asked me this question, I had already  
24 explained it.

25 Q You're supposed to tell him that.

1                   Turning back to Exhibit 131, is the  
2 information that is put into the system when a  
3 shipment is received used for inventory purposes?

4           A     Yes.

5           Q     So if Jay-Y -- if a salesperson wanted to  
6 know whether or not there were any sunglasses of  
7 model NK-6341/CM, would they go to the SBT system to  
8 find that out?

9           A     Yes, they will.

10          Q     Mr. Lerner asked you this morning about  
11 the physical sunglasses that we have in front of us,  
12 photographs of which are reflected in Exhibits 100  
13 through 130.

14                   Do you recall some of that testimony?

15          A     Yes.

16          Q     And I believe you testified that you asked  
17 the factory or factories if they could ship you some  
18 of the specific models that you had listed that you  
19 thought included a "DG" logo; is that right?

20          A     Yes.

21          Q     And some of the factories shipped you some  
22 of the models that were on your list; is that right?

23          A     Yes.

24          Q     And do you know where the factories have  
25 the sunglasses that they shipped to you?

1 MR. LERNER: Objection.

2 THE WITNESS: I don't remember.

3 BY MR. WILTON:

4 Q And Mr. Lerner, I believe, asked you  
5 whether you knew whether the factories had  
6 manufactured new pairs of sunglasses with the model  
7 numbers that you requested.

8 Do you recall that?

9 A Can you repeat the question? I am not  
10 sure I really understood the question.

11 Q I'll ask the question that Mr. Lerner  
12 asked.

13 Do you know whether the factories created  
14 sunglasses to ship to you when you requested the  
15 specific model numbers with the "DG" logos?

16 MR. LERNER: Objection.

17 THE WITNESS: I don't think it is possible for  
18 them to manufacture it. I think they would have to  
19 just go search for them in their warehouse or in  
20 their showroom.

21 BY MR. WILTON:

22 Q Do you know what is required to  
23 manufacture a pair of sunglasses? That's a yes or  
24 no, please.

25 A Yes.

1 Q And if the factory wanted to manufacture,  
2 for example, model No. 96008, which is reflected in  
3 Exhibit 108, do you know what would be required to  
4 manufacture that pair of sunglasses? Yes or no.

5 A Yes.

6 Q What would be required?

7 A Well, first, they must have that mold, so  
8 they must have three molds.

9 Q What are the three molds for?

10 A They would use a very big piece of metal,  
11 and maybe this piece of metal would be the mold from  
12 this temple, and then maybe that mold at one time  
13 could make four temples, and then it would be the  
14 same for this temple, and this here (Indicating),  
15 and then you must have that mold.

16 Making the mold would cost quite a bit of  
17 money, and it would require a long period of time to  
18 make it.

19 And, of course, nowadays the technology is  
20 very advanced. It is more advanced than before, but  
21 if you want to just look at a catalog and make a  
22 mold, even in today's technology you still couldn't  
23 do it. And there would be a lot of differences, and  
24 when it is done it would not look like that style.

25 Q So backing that up a little bit, if we

1 look at the 1995 catalog, which is Exhibit 174, and  
2 we wanted to make model 3002, which appears on the  
3 twelfth page, why would that be difficult to do?

4 MR. LERNER: Objection.

5 THE WITNESS: Well, first of all, you have to  
6 look at the appearance of that glasses. You  
7 must first take a piece of metal, and you have to be  
8 able to cut out that shape of that glasses, and then  
9 to do that part of that is very difficult.

10 So even like today, if you want to take a  
11 piece of paper and you want to draw it, it is the  
12 same. It is very difficult to make it exactly the  
13 same. Especially try to etch it from a piece of  
14 metal.

15 BY MR. WILTON:

16 Q Is it easier or harder to make a pair of  
17 sunglasses out of metal, such as, for example,  
18 Exhibit 110, which is NK-609? Is that --

19 MR. LERNER: Objection.

20 BY MR. WILTON:

21 Q Or is it the same process?

22 MR. LERNER: Objection.

23 THE WITNESS: It is different.

24 BY MR. WILTON:

25 Q What is the difference between

1 manufacturing the plastic pair of sunglasses and a  
2 metal pair of sunglasses?

3 A Well, this is extruded from --

4 THE INTERPRETER: Hang on.

5 (There was a discussion in Mandarin  
6 between the witness and the interpreter.)

7 THE WITNESS: It would be either gold brass or  
8 white brass. You would still need to have a mold to  
9 make these parts.

10 So the technology to make this mold and  
11 the technology to make this mold (Indicating) are  
12 different. This is made via injection.

13 BY MR. WILTON:

14 Q When you say, "This is made via  
15 injection," you're talking about the plastic  
16 version, the plastic sunglasses?

17 A First you have to have a mold, and so you  
18 put the plastic into the mold to make the face of  
19 the glasses or maybe the temple, and then it is very  
20 difficult when you make one order to just make one  
21 dozen or just two dozen or three dozen because the  
22 plastic, when it goes through the tubing in the  
23 machinery, that tubing is very long.

24 So in the very beginning it is not smooth.  
25 So any of the first ones that come out has to be

1 discarded. So all of those would be part of our  
2 cost.

3 And then during the ending of the process,  
4 it is the same thing. So most of the factories,  
5 when you make an order they would require a minimum  
6 order of 300 dozen. So nobody would make -- would  
7 accept a four dozen order. Because when you do 10  
8 dozen and a hundred dozen, the cost would be the  
9 same. Okay? For the material portion the cost is  
10 the same.

11 Q So in order to make the plastic  
12 sunglasses, does the factory first have to make a  
13 mold for it?

14 A Yes.

15 Q And then do they then inject the plastic  
16 into the mold?

17 A Yes.

18 Q And does it take a certain number of pairs  
19 of sunglasses before the mold starts creating  
20 sunglasses that can be sold?

21 A I am not sure I understand.

22 Q You mentioned that there is certain amount  
23 of roughness at the beginning of the process. What  
24 are you talking about? Actually, strike that.  
25 Never mind. We will move on.

1                   Has Jay-Y sold any of the sunglasses that  
2                   are on the table in front of you, photographs of  
3                   which have been marked as Exhibits 100 through 130,  
4                   in the last 10 years?

5                   A       No.

6                   Q       Did the factories charge you for sending  
7                   you the sunglasses that you asked for in 2009 that  
8                   are on the table in front of you?

9                   A       No.

10                  Q       Did you pay the factories for the  
11                  sunglasses that they sent you in 2009 that are on  
12                  the table in front of you?

13                  A       No.

14                  Q       During the period from 1993 through 1998,  
15                  do you recall what percentage of Jay's overall sales  
16                  were made outside of the United States?

17                  MR. LERNER:  Objection.

18                  THE WITNESS:  I don't really know exactly, but  
19                  it is -- the quantity was very small.

20                  BY MR. WILTON:

21                  Q       During the period from 1993 to 1998, did  
22                  Jay-Y make sales outside of the United States?

23                  A       Yes.

24                  Q       And given your role at Jay-Y during that  
25                  time, were you aware of those sales?



1 A Yes.

2 Q Do you know whether those sales accounted  
3 for more or less than 50 percent of Jay-Y's overall  
4 sales?

5 A A lot lower.

6 Q Did sales outside the United States,  
7 between 1993 and 1998, account for less than  
8 25 percent of Jay-Y's overall sales?

9 A At first I said it was much lower than  
10 15 percent, so it would be much much less than  
11 25 percent.

12 Q My apologies.

13 Do you know whether sales outside the  
14 United States accounted for less than 5 percent of  
15 Jay-Y's overall sales between 1993 and 1998?

16 A I don't exactly know how much, but I  
17 believe that it is less than 5 percent.

18 Q When Jay-Y sold product outside the United  
19 States between 1993 and 1998, how did the customers  
20 pay for that product?

21 A There were some who paid cash, and there  
22 were some on credit, and there were some by check,  
23 and I believe there were also some that wired money  
24 over.

25 Q Does Jay-Y keep physical copies of the

1 invoices that it sends out to customers?

2 A When we ship the shipments out, yes, and  
3 also as required by our CPA, we keep those for seven  
4 years.

5 Q And what happens after seven years to  
6 those invoices?

7 A Well, if there was no use for them and  
8 because it takes up space, then we -- perhaps we had  
9 discarded them.

10 MR. WILTON: Nothing further for me. So we go  
11 back to Mr. Lerner.

12  
13 RECROSS EXAMINATION

14 BY MR. LERNER:

15 Q A little while ago you were speaking with  
16 your counsel, Mr. Wilton, about the use of the  
17 catalogs by Jay-Y to communicate with its customers.

18 Do you remember that?

19 A Yes.

20 Q And in that connection you indicated that  
21 you would describe the fact that certain glasses had  
22 logos on them because you really wanted to go the  
23 route of building your own brand; is that right?

24 A Yes.

25 Q And you said that to you it was very

1 important to disclose that you were using "DG" on  
2 certain glasses; is that right?

3 A Yes.

4 Q And why not show the "DG" in the catalogs  
5 themselves?

6 A Well, because the style for us is more  
7 important. We did, like for one glasses -- one pair  
8 of glasses we would show a front view and a side  
9 view.

10 Q Isn't it possible to show a three-quarter  
11 view? Do you know what I mean by a three-quarter  
12 view?

13 A Then you would kind of lose the face of  
14 the glasses.

15 Q Looking at the front page of Exhibit 174,  
16 the 1995 catalog, is it your testimony that you lose  
17 the face of the glasses that appear on the front  
18 because they are angled somewhat to the side?

19 A If, for example, you have two pairs of  
20 glasses, if they are very similar, and if you take  
21 the photograph this way, then you can't really tell  
22 them apart.

23 Q When you say "this way," are you  
24 indicating front on?

25 A So if you photograph at the front, then

1       you can actually really see the shape.

2           Q     Again, is it your testimony that if you  
3     photograph at a bit of an angle, like the glasses  
4     shown on the front cover, that you can't see the  
5     shape of the lens?

6           A     No, not the lens. I'm talking about the  
7     frame, the shape of the entire frame.

8           Q     Same question, is it your testimony you  
9     can't see the shape of the frame, based on a  
10    slightly angled picture like the one on the front of  
11    the catalog, that is the front of Exhibit 174?

12          A     This would be a little bit different  
13    because when we take photographs of this we always  
14    use the front view.

15                Also, I think the people who make the  
16    catalog, when they take the photographs, because the  
17    lenses reflect light, so when they take a picture,  
18    and if it is at one angle, then it would be easier  
19    to take those pictures.

20                So it wouldn't be that for each one they  
21    would have to readjust the lighting. Otherwise,  
22    just like in these lenses, you can see our  
23    reflection on the lens.

24          Q     Are you a professional photographer,  
25    Ms. Chen?

1 A No.

2 Q Were you present at any of the photo  
3 shoots for the catalogs?

4 A I went to look.

5 Q How many times?

6 A I don't remember.

7 Q Did you stay throughout the entire session  
8 for photographing for the catalogs?

9 A Well, I wasn't there to look, but I looked  
10 at the negative because I had to match them with the  
11 style numbers.

12 Q The question is -- you testified a moment  
13 ago that you recalled having gone to a photography  
14 session in connection with the creation of a  
15 catalog; is that right?

16 A Yes.

17 Q With regard to that time when you went to  
18 the photography session, did you stay for the entire  
19 session?

20 A I did not stay for the entire session.

21 Q You also indicated earlier that you used  
22 catalogs, for example, if a customer called and you  
23 didn't have a particular model number in stock, that  
24 without the catalog, it would be difficult to point  
25 that customer to a comparable model number; is that

1 right?

2 A Yes.

3 Q Why couldn't you, without a catalog, just  
4 say that a different model number is a very similar  
5 style?

6 A Well, I said it, but if they can't confirm  
7 that is what they liked, then, after seeing it, or  
8 they don't like it, or it doesn't sell well, then it  
9 would be returned to us, and it would be a loss for  
10 us.

11 Q Did that ever happen?

12 A Very seldom.

13 Q Do you know whether the factories that you  
14 purchased glasses from sold certain model numbers  
15 exclusively to Jay-Y -- strike that. I don't mean  
16 to say model number.

17 Certain models of glasses, regardless of  
18 the number that Jay-Y considered it, do you know  
19 whether factories sold particular models from a  
20 given mold to any other customers besides Jay-Y?

21 A Yes, they will.

22 Q Do you know whether or not, after Jay-Y  
23 stopped selling the glasses that are depicted in  
24 Exhibits 100 through 130, the factories continued to  
25 sell similar models to other customers?

1           A     They wouldn't tell me, and I wouldn't  
2     know.

3           Q     So you don't know whether they kept the  
4     molds after you stopped purchasing these models?

5           A     I don't know, but once the fashion has  
6     passed, or fad has passed, then these styles would  
7     not sell well, and then other competitors wouldn't  
8     sell them either.

9           Q     But do you know for a fact that no one  
10    bought these after you?

11          A     I don't know.

12          Q     Do you know whether, when selling similar  
13    models to the ones that Jay-Y purchased, the factory  
14    affixed other logos to these models?

15          A     I don't know. And that's also a reason  
16    why I want to have my own logo.

17          Q     Looking at model No. 96008 that I think  
18    your counsel reviewed with you depicted in  
19    Exhibit 108, if a factory had a mold for that model  
20    it could run off several dozen without having to  
21    create a new mold; correct?

22          A     If they had it, yes.

23          MR. LERNER: Nothing else. Thank you.

24          MR. WILTON: I'm done.

25                   In accordance with the Trademark rules of

1 practice, we will provide instructions to the court  
2 reporter/TSG, in terms of how the transcript needs  
3 to be prepared, formatted, reviewed by the witness,  
4 signed, and then sent to the Trademark Trial and  
5 Appeal Board.

6 I will get those instructions, hopefully  
7 by Friday to you, if TSG does not have them.

8 With regard to the exhibits, rather than  
9 ask the court reporter to keep custody of and ship  
10 back and forth the several thousand pages of  
11 exhibits, I will take custody of them, keep them as  
12 dry as possible, and I will prepare -- or my office  
13 will prepare a CD that will include all of the  
14 exhibits on them, with the exhibit numbers as  
15 written on each of these, which I will send to the  
16 court reporter and counsel, Mr. Lerner.

17 The court reporter, when the original is  
18 prepared, will deliver that one to Ms. Chen, or she  
19 will come in to review it, one way or another,  
20 together with the CD copy of the exhibits, as  
21 opposed to physical exhibits.

22 And less you be concerned, you are  
23 relieved of all of your duties under the California  
24 Code of Civil Procedure, to the extent that any may  
25 govern this proceeding.



1                   Is there anything else you need?

2                   (A discussion was held off the record.)

3                   MR. WILTON: After the transcript is prepared  
4 the court reporter shall send it to me, to my  
5 attention. I will arrange for Ms. Chen to review  
6 the transcript and make any corrections that need to  
7 be made on the errata sheet and sign it under  
8 penalty of perjury and return the original back to  
9 the court reporter, who will then deliver it  
10 forthwith to the Trademark Trial and Appeal Board.

11                   (The deposition was concluded  
12 at 2:36 p.m.)

13                                   \*     \*     \*

\* \* \*

I, DECLARE UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS AN ACCURATE TRANSCRIPTION OF MY  
TESTIMONY UNDER THE LAWS OF THE STATE OF CALIFORNIA,  
EXECUTED ON THE 28 DAY OF May  
2011.

Teresa Chen  
TERESA CHEN

## REPORTER'S CERTIFICATE

I, LESLIE L. WHITE, CSR NO. 4148,

Reporter and Notary Public, certify:

That the testimony of TERESA CHEN was taken before me on March 23, 2011 at 9:37 a.m. at 333 South Hope Street, Suite 3900, Los Angeles, CA, in the offices of Seyfarth Shaw, at which time the witness was put under oath by me;

That the attorneys for the adverse party appeared;

That I am not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken;

I further certify that I am not a relative or employee of any attorney or of any of the parties nor financially interested in the action.

DATED: April 4th, 2011



LESLIE L. WHITE, CSR NO. 4148

1 NAME OF CASE: GADO vs. JAY-Y

2 DATE OF DEPOSITION: 3/23/11

3 NAME OF WITNESS: TERESA CHEN, VOLUME II

4 Reason Codes:

- 5 1. To clarify the record.
- 6 2. To conform to the facts.
- 7 3. To correct transcription errors.

8 Page 186 Line A10 Reason \_\_\_\_\_

9 From Lenders to Lens

10 Page 208 Line A25 Reason \_\_\_\_\_

11 From Know to no

12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

15 From \_\_\_\_\_ to \_\_\_\_\_

16 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

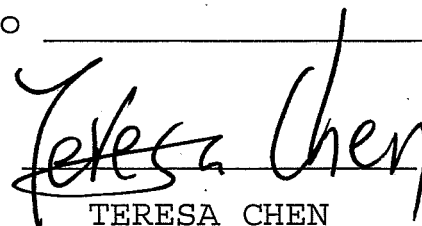
17 From \_\_\_\_\_ to \_\_\_\_\_

18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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